

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 3. AGRICULTURE

#### CHAPTER 4. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

#### PREAMBLE

**1. Sections Affected**

R3-4-219  
R3-4-220  
R3-4-226  
R3-4-230

**Rulemaking Action**

Amend  
Amend  
Amend  
Repeal

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 3-107(A)(1)

Implementing statute: A.R.S. § 3-201.01

**3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 1710, May 30, 2003

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Sherry D. Blatner, Rules Analyst  
Address: Arizona Department of Agriculture  
1688 W. Adams, Room 235  
Phoenix, AZ 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-5420  
E-mail: sherry.blatner@agric.state.az.us

**5. An explanation of the rules, including the agency's reasons for initiating the rules:**

This rulemaking updates the rules to the current rulewriting standards of the Office of the Secretary of State. Outdated references to the Commission of Agriculture and Horticulture are eliminated. Content is consolidated for greater clarity and where possible the substructure of the rules is standardized for consistency throughout the Article.

R3-4-219 contains an amended list of pests. The subsection on regulated commodities now includes the genera *Fortunella* and certain appliances. Conditions for commodity admission into Arizona have been rewritten and placed in subsection (D), "Restrictions." Subsection (E) is created to advise persons of an exemption from required treatment of commodities. Appendix A is deleted and the current acceptable treatments are included in subsection (F).

R3-4-220 contains an amended list of pests, separated into categories for viral diseases and arthropods. The subsection on commodities regulated now includes the genera *Eremocitrus* and *Microcitrus*. Conditions for commodity and appliance admission into Arizona have been rewritten and placed in subsection (D), "Restrictions." The subsection for treatments has been deleted and the current Department protocol is listed within subsection (D).

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R3-4-226 contains an amended list of pests. The area under quarantine is now consolidated into one listing, the entire state of Alabama is included, and is not separated by pest. The regulated commodity list is amended and consolidated into one list, regardless of pest. A new subsection (D), "Restrictions," replaces four previous subsections dealing with conditions of admission. Subsection (E), "Exemptions," is created to advise persons of the situations in which treatment may not be necessary. Subsection (F) is created to advise persons of currently acceptable commodity treatment, previously detailed in the various subsections dealing with conditions of admission.

R3-4-230 is repealed and the exemption provided for the Improved Meyer Lemon plant and the restriction on the Meyer Lemon plant is relocated to R3-4-220(D).

The Department committed to update these rules in the 1998 and 2003 five-year review reports presented by the Plant Services Division to the Governor's Regulatory Review Council.

**6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

*A. The Arizona Department of Agriculture.*

The Department will incur modest expenses related to training staff and educating the regulated community on the amendments.

*B. Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

*C. Businesses Directly Affected by the Rulemaking.*

Out-of-state growers, shippers, and plant regulatory officials seeking to ship a regulated commodity from an area under quarantine will need to conform to the new regulations. Arizona receiving nurseries will need to become familiar with the revised lists of pests, areas under quarantine, regulated commodities, and restriction conditions.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Sherry D. Blatner, Rules Analyst  
Address: Arizona Department of Agriculture  
1688 W. Adams, Room 235  
Phoenix, AZ 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-5420  
E-mail: sherry.blatner@agric.state.az.us

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

An oral proceeding is not scheduled for this proposed rulemaking. To request an oral proceeding or to submit comments, please contact the rules analyst listed in item #4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 5:00 p.m. on December 15, 2003.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE  
PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section

- R3-4-219. Citrus Fruit Surface Pest  
R3-4-220. Citrus Nursery Stock Pests  
R3-4-226. Scale insect pest  
R3-4-230. ~~Fristeza or Quick Decline of Citrus~~ Repealed

ARTICLE 2. QUARANTINE

**R3-4-219. Citrus Fruit Surface Pest**

**A. Definitions**

1. ~~“Certificate” means a document signed by an agent of the Department of Agriculture from the state of origin attesting to a pest treatment or absence of a pest.~~
2. ~~“Commodities” means fruit of all varieties and species of the genera citrus, poneirus, and all hybrids, including appliances used in citrus groves or other areas in picking, packing or handling fruit which are capable of spreading the pests or diseases as defined in R3-4-102.~~
3. ~~“Department of Agriculture” means an agent of the state of origin from which commodities, as defined in subsection (D), are shipped into Arizona.~~
4. ~~“Director” means the Director of the Arizona Department of Agriculture.~~
5. ~~“Inspector” means an inspector of the Arizona Department of Agriculture.~~
6. ~~“Pests” means:~~
  - a. ~~California Red Scale, *Aonidiella auranti*~~
  - b. ~~Chaff scale, *Parlatoria pergandii*~~
  - c. ~~Citrus Canker, *Xanthomonas campestris var. citri*~~
  - d. ~~Citrus Rust Mite, *Phyllocaptruta oleivora*~~
  - e. ~~Comstock Mealybug, *Pseudococcus comstockii*~~
  - f. ~~Florida Red Scale, *Chrysomplalus aonidum*~~
  - g. ~~Fullers Rose Weevil, *Pantomorus cervinos*~~
  - h. ~~Glover scale, *Lepidosaphes gloverii*~~
  - i. ~~Purple scale, *Lepidosaphes beekii*~~
  - j. ~~Yellow scale, *Aonidiella citrina*~~
7. ~~“Stamp” means a label or printed legend placed on cartons by the Department of Agriculture which identifies the contents as having been treated in a manner to prevent the transmission of pests into Arizona.~~

~~“Pest” means all life stages of the following:~~

~~*Aonidiella auranti*, California Red Scale;~~  
~~*Aonidiella citrina*, Yellow scale;~~  
~~*Asynonychus godmani*, Fuller rose beetle;~~  
~~*Chrysomphalus aonidum*, Florida red scale;~~  
~~*Cornuaspis beekii*, Purple scale;~~  
~~*Lepidosaphes gloverii*, Glover scale;~~  
~~*Maconellicoccus hirsutus*, Pink hibiscus mealybug;~~  
~~*Parlatoria pergandii*, Chaff scale;~~  
~~*Phyllocoptruta oleivora*, Citrus rust mite; or~~  
~~*Pseudococcus comstocki*, Comstock mealybug.~~

**B. Quarantined areas.** ~~All areas outside the state of Arizona and all areas within the state of Arizona declared infested by the Director.~~ Area under quarantine. All states, territories, and districts of the United States, except the state of Arizona.

**C. Regulated commodities and appliances.**

1. Commodities. The fresh fruit of all species, varieties, and hybrids of the genera *Citrus*, *Fortunella*, and *Poncirus*.
2. Appliances. An appliance used in a citrus grove, citrus nursery, or other area to pick, pack, or handle a regulated commodity listed in subsection (C)(1).

**~~E. Conditions for admission into Arizona.~~**

1. ~~Fruit which originates outside the state shall not be allowed entry until it has been treated by 1 of the methods listed in Appendix A of this Section and meets the following conditions:~~

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- a. Except for tangerines and lemons, the condition of fruit shall be free of stems, leaves, and plant parts. Tangerines and lemons may be admitted with stems which do not exceed 1/2 inch in length with no leaves attached.
- b. A certificate shall accompany each shipment confirming that the treatment was done under state supervision and specifying the variety and quantity of fruit treated, the place, date, and method of treatment.
- c. Before delivery to the retail sale outlet, every carton of treated fruit shall be identified by a stamp which states "PROCESSED IN ACCORDANCE WITH ARIZONA REQUIREMENTS".
- 2. The Director may issue a permit exempting shipments of fruit from treatment, which permits shall include the following:
  - a. Certification that the quarantined area or commodity involved is free of scale pests.
  - b. Certification that reports:
    - i. Origin of the fruit in each shipment.
    - ii. Fruit has been cleaned, packed, and handled in a commercial packing house in the usual manner of preparing fruit for interstate commerce and complies with the requirements of Appendix A of this Section.
    - iii. Name of consignee and consignor.
    - iv. Statement of quantity of fruit.
    - v. Date of shipment.
- 3. Noncommercial quantities consisting of 20 pounds or less of fruit, originating from an area free of internal fruit pests, may be inspected by an inspector for surface pests. If found free of surface pests, it shall be admitted without meeting the requirements of subsection (F).

**D. Restrictions.**

- 1. A regulated commodity or appliance listed in subsection (C) shall be free of stems, leaves, and plant parts.
- 2. A person shall not ship into Arizona a regulated commodity or appliance from an area under quarantine unless each shipment is accompanied by an original certificate issued by a plant regulatory official of the state of origin attesting that the regulated commodity or appliance was treated by a method listed in subsection (F), under the official's supervision.

**E. Exemption.** The Director may issue a permit to allow a regulated commodity or appliance from an area under quarantine to enter Arizona without treatment as prescribed in subsection (F) if the article originates from an area:

- 1. That a plant regulatory official of the state of origin certifies as pest-free; or
- 2. That is infested, but a plant regulatory official of the state of origin attests by detection surveys that the area is free of exotic fruit flies belonging to the Family *Tephritidae*, and the regulated commodity is shipped to an Arizona juicing facility located outside of Yuma County.

**D. Conditions for movement of fruit originating within Arizona.**

- 1. Commodities found to be infested with any of the pests covered in subsection (A)(5) shall be held under quarantine at the place found or moved to a designated area for treatment as prescribed by the Director.
- 2. Quarantined fruit shall be released by the Director only under 1 of these conditions:
  - a. The shipment is immediately removed from the state under the supervision of an inspector, or
  - b. The shipment receives treatment immediately to kill the pests involved under the supervision of an inspector in accordance with treatments listed in Appendix A of this Section.

**E. Citrus canker exclusion.** No treatment is recognized effective for citrus canker bacterial infection. All shipments from canker-infected areas or found to be infected with citrus canker shall immediately be shipped out of Arizona or destroyed at owner's expense.

**F. Treatment methods.** Required treatment for covered pests on fruit or appliances are listed in Appendix A of this Section.

- 1. Hydrogen cyanide fumigation. The regulated commodity shall be treated for one hour at the following rate:

<u>Pulp Temperature</u>	<u>Rate per 100 cu. ft.</u>
60° F to 85° F	25 cc HCN gas
- 2. Methyl bromide fumigation (Q label). The regulated commodity shall be treated for two hours at one of the following rates:

<u>Pulp Temperature</u>	<u>Rate per 1000 cu.ft.</u>
60° F to 79° F	3 lbs.
80° F or higher	2 1/2 lbs.
- 3. Irradiation. The regulated commodity shall be treated at a rate approved by the Director.
- 4. Steam treatment. The regulated appliance shall be cleaned to remove all fruit, leaves, stems, and other debris and then steam-treated.
- 5. Any other treatment approved by the Director.

**G. Violations.** Commodities shipped into or moved within Arizona in violation of this rule shall, at the option of the Department of Agriculture, immediately be shipped out of the state, returned to the state of origin, or destroyed in accordance with A.R.S. § 3-210. Disposition of regulated commodity or appliance not in compliance. A regulated commodity or appliance shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out-of-state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

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**Appendix A**

- A.** General requirements for fumigation of fruit, using either cyanide or methyl bromide:
1. Cartons shall be vented to allow adequate circulation of the fumigant and air.
  2. Cartons shall be arranged on pallets or in trucks with slatted bottoms to allow adequate fumigant and air circulation.
  3. A fan of sufficient power to circulate the entire air volume in the chamber every 5 minutes shall be used during the fumigation.
  4. Tarps used shall be gas tight and free of holes. Vans used shall be rendered gas tight by taping all openings around doors, drains and vents.
  5. Fruit shall be free of surface moisture to avoid damage to fruit.
  6. Temperatures required relate to the core fruit temperature.
- B.** ~~Fruit or appliances shall be fumigated with cyanide at atmospheric pressure in a gas tight fumigation chamber of approved design for a period of 1 hour under the following conditions:~~
- |                  |                      |
|------------------|----------------------|
| Pulp Temperature | Rate per 100 cu. ft. |
| 60° F. to 85° F. | 25cc HCN gas         |
- Circulation must be maintained during the entire fumigation period.
- C.** ~~Special requirements for methyl bromide fumigation. Fruit or appliances shall be fumigated at atmospheric pressure in a gas tight chamber of approved design using methyl bromide gas for a period of 2 hours under the following conditions:~~
- |                               |                       |
|-------------------------------|-----------------------|
| Pulp Temperature              | Rate per 1000 cu. ft. |
| No less than 60° F. to 79° F. | 3 lbs.                |
| 80° F. or above               | 2 1/2 pounds          |
- D.** Oil dip for scale pests. The fruit shall be completely submersed for a period of not less than 5 minutes in a 3% concentration of an oil emulsion. The stock emulsion shall contain no less than 80% oil by volume of an oil that tests no less than 70 viscosity S.S. and no less than 90 unsulfonated residue. The apparatus used in this treatment shall be equipped with an agitator that will ensure a dipping medium of uniform consistency throughout. The temperature of the dipping emulsion shall be maintained at or above 50° F. during treatment. The dipping emulsion shall be prepared fresh daily or more often if the tank becomes fouled with debris. Used emulsion shall be disposed of as per label. The tank shall be thoroughly cleaned daily or more often if it becomes fouled with debris. If water used has a high mineral content, appropriate softener shall be added to the emulsion.

**R3-4-220. Citrus Nursery Stock Pests**

**A.** Jurisdiction. ~~The entry of commodities covered into the state of Arizona shall be governed by the following rule.~~

**B.** ~~Pests Covered.~~

1. ~~Citrus bud mite Eriophyes sheldoni, Ewing.~~
2. ~~Citrus red mite Panonychus citri, McGregor.~~
3. ~~Citrus Rust mite Phyllocoptruta oleivora, Ashm.~~
4. ~~Comstock Mealybug Pseudococcus comstocki, Kuwana.~~
5. ~~Quick Decline, Tristeza disease.~~

**A.** Definitions.

1. "Pest" means any of the following viral diseases or arthropods:

a. Viral diseases:

Cachexia (CVd-II).

Citrus Exocortis Virus (CEVd).

Citrus Psorosis Virus (CPsV).

Citrus Tristeza Virus (CTV), or

Vein Enation, also known as Woody Gall, or

b. Arthropods:

Aceria sheldoni, Citrus bud mite;

Aleurothrixus floccosus, Woolly whitefly;

Aonidiella aurantii, California red scale;

Aonidiella citrina, Yellow scale;

Chrysomphalus aonidum, Florida red scale;

Dialeurodes citri, Citrus whitefly;

Dialeurodes citrifolii, Cloudy-winged whitefly;

Maconellicoccus hirsutus, Pink hibiscus mealybug;

Phyllocoptruta oleivora, Citrus rust mite;

Pseudococcus comstocki, Comstock mealybug; or

Pulvinaria psidii, Green shield scale.

**C.** ~~Area Under Quarantine. The quarantined area shall include all areas outside of the state of Arizona and any area found infested within the state of Arizona.~~

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**B.** Area under quarantine. All states, territories, and districts of the United States, except the state of Arizona.

**~~D.C.~~** Commodities Covered: Regulated commodities and appliances.

1. All varieties and species of the genera Citrus, Fortunella, Poncirus, and all hybrids thereof, either among the same genera or with other genera, the tree, plants, and parts thereof, including seeds, leaves, buds, scions, cuttings, seedlings, and rootstock, and any other plant when found infested with any pest set forth in subsection (B) of this rule. Commodities. A plant or plant part, except seed or attached green fruit, of all species, varieties, or hybrids of the genera Citrus, Eremocitrus, Fortunella, Poncirus, and Microcitrus.
2. Any materials, appliances or vehicles used in citrus groves or any other area, in the picking, packing, or handling of citrus nursery stock, which by reason of exposure or contact would constitute a risk of spreading the insect pests as set forth in subsection (B) of this rule. Appliances. An appliance used in a citrus grove, citrus nursery, or other area to handle citrus nursery stock listed in subsection (C)(1).
3. Soil from citrus groves or nurseries.

**~~E.~~** Conditions for Admission:

1. Citrus nursery stock shall be admitted to the state only under permit issued by the Director of the Commission of Agriculture and Horticulture pursuant to this rule. The original permit shall accompany each and every shipment and applicable certification tags shall be attached to the commodities covered. Each shipment shall be subject to further inspection for insect pests and diseases and to the following requirements:
  - a. Each shipment of nursery stock or, in the case of buds, budwood, scions, and cuttings, the parent trees shall be certified by an Inspector of the state of origin, or by the U.S. Department of Agriculture, that it has been indexed and found free of Tristeza and other pathogens specified in the permit. In the event such certification cannot be obtained, the nursery stock shall be consigned, after prior arrangements, to the Citrus Experimental Station of the University of Arizona for immediate indexing and testing for Tristeza and other pathogens.
  - b. The certificate referred to in subsection (E) of this rule shall state that the nursery stock was grown on property which had been inspected at least once during the 12 months prior to the date of shipment. In addition, the certificate shall state that none of the pests listed by the Director of the Commission of Agriculture and Horticulture in the application for permit were found on the premises where the nursery stock was grown, or on any property within 1 mile of those premises. If 1 or more of the insect or mite pests listed are known to exist in the designated area of those premises, the nursery stock shall be given the appropriate treatment set forth in subsection (F) of this rule. The treatment given the nursery stock shall be listed on the certificate issued by the Inspector of the state of origin.
  - c. The certificate referred to in subsection (E)(1) of this rule shall state that the nursery stock was stored or held in an area where none of the pests listed in the application for permit are known to occur. The nursery stock shall have been inspected within 2 weeks prior to shipment by an Inspector of the state of origin and found free of dangerous insect pests and plant diseases.
2. Citrus Appliances. Any commodity listed in subsection (D)(2) of this rule shall be admitted to the state of Arizona only after it has been given 1 of the treatments specified in subsection (F) of this rule and if it is accompanied by a Certificate of Treatment signed by a plant quarantine official of the state or area of origin.
3. Intrastate Movement of Citrus Nursery Stock. Citrus nursery stock, including citrus trees, plants, buds and scions, which is infested or infected with any pest named in subsection (B) of this rule, shall be moved from 1 designated area to another within the state of Arizona only after it has been inspected by an Inspector and if it is accompanied by a Certificate of Inspection signed by an Inspector of the Commission.

**~~D.~~** Restrictions.

1. A person is prohibited from shipping a Meyer lemon plant or plant part, except fruit, into Arizona. An exception is allowed for the selection Improved Meyer Lemon plant, plant part, or fruit, which may be shipped into Arizona in compliance with this Section.
2. A person shall not ship into Arizona a regulated commodity from an area under quarantine unless each shipment is accompanied by an original certificate issued by a plant regulatory official of the state of origin attesting that:
  - a. The regulated commodity originates from a source tree that was tested at a state of origin approved laboratory and was found free from every virus listed in subsection (A)(1).
  - b. A bud, cutting, or scion from an untested or disease-infested source tree was not used for the propagation of the regulated commodity, and
  - c. The regulated commodity is free from every arthropod listed in subsection (A)(2) in accordance with a method approved by the Director.
3. A person shipping a regulated commodity into Arizona shall attach a single tag or label to each plant or plant part that is intended for resale by an Arizona receiver, providing the following information separately for each scion variety grafted to a single rootstock:
  - a. Name and address of the nursery that propagated the plant.
  - b. Scion variety name.

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c. Scion variety registration number, and

d. Rootstock variety name.

**F. Treatments:**

1. ~~Vacuum Cyanide Fumigation for Whiteflies, Mealybugs, or Mites. Citrus nursery stock shall be fumigated using a dosage of 1 ounce of sodium cyanide, or its equivalent, per 100 cubic feet of chamber space, at 27-inch mercurial vacuum. Fumigation shall cover a period of not less than 1 hour after the fumigator has been properly charged and the chamber has reached a 27-inch mercurial vacuum.~~
  2. ~~Methyl Bromide Fumigation for Mealybugs or Mites:~~
    - a. ~~Pretreatment. Nursery stock shall be in good, healthy condition, turgid, and under as little shock as possible. When atmospheric temperature is below 80° Fahrenheit during the day, nursery stock shall be preheated for a period of 2 hours at 80° Fahrenheit.~~
    - b. ~~Treatment:~~
      - i. ~~Dosage. 2 1/2 pounds methyl bromide per 1,000 cubic feet of chamber space.~~
      - ii. ~~Exposure. Two hours.~~
      - iii. ~~Temperature. At least 80° Fahrenheit.~~
      - iv. ~~Humidity. 75% or over.~~
      - v. ~~Load Factor. Load chamber to permit free circulation of fumigant. Citrus trees shall not be double-tiered. Load shall not exceed 400-500 trees per 1,000 cubic feet.~~
      - vi. ~~Circulation and Chamber. Chamber shall be gastight, of the design approved by federal or state authority, and equipped with a fan or other circulating device. Circulation shall be maintained during the entire fumigation period.~~
    - c. ~~Post treatment. Fumigated stock shall be kept away from sunlight and wind for 48 hours.~~
  3. ~~Oil Dip—Citrus Nursery Stock for Mites:~~
    - a. ~~Dip all nursery stock and citrus trees, using either 1 3/4% light-medium emulsive oil, or 2% light-medium emulsion, plus 1/4 pound actual chlorobenzilate per 100 gallons water. The apparatus used in the application of this treatment shall be constructed to permit complete submersion of all aboveground portions of the plants and shall be equipped with an agitator that will ensure a dipping medium of uniform consistency throughout.~~
    - b. ~~The water temperature in the dipping tank shall not be allowed to drop below 50° Fahrenheit or rise above 100° Fahrenheit during the time of treatment. The dipping tank shall be completely drained and cleaned. A new batch of fresh ingredients shall be prepared and used at least daily, or more often if the ingredients become fouled with debris.~~
  4. ~~Methyl Bromide Fumigation—Citrus Nursery Stock for Mites:~~
    - a. ~~Pretreatment. The nursery stock shall be in good healthy condition, turgid, and under as little shock as possible. When the atmospheric temperature is below 80° Fahrenheit during the day, the nursery stock shall be preheated for a period of 2 hours at 80° Fahrenheit.~~
    - b. ~~Treatment:~~
      - i. ~~Dosage. 1 3/4 pounds of methyl bromide per 1,000 cubic feet of chamber space.~~
      - ii. ~~Exposure. Two hours.~~
      - iii. ~~Temperature. At least 80° Fahrenheit.~~
      - iv. ~~Humidity. 75% or over.~~
      - v. ~~Load Factor. Load chamber to permit free circulation of fumigant. Citrus trees shall not be double-tiered. The load shall not exceed 400-500 trees per 1,000 cubic feet.~~
      - vi. ~~Circulation and Chamber. The chamber shall be gastight, of the design approved and equipped with a fan or other circulating device. Circulation shall be maintained during the entire fumigation period.~~
    - c. ~~Post treatment. Keep the fumigated stock from sunlight and wind for 48 hours.~~
  5. ~~Chlorpyrifos Treatment for Mealybugs or Mites. Chlorpyrifos in a 4-pounds-per-gallon 4E formulation, registered for such use in an emulsion of narrow range spray oil, petroleum oil NR-415 emulsive.~~
    - a. ~~Dip. Totally submerge the plant material for 2 minutes, remove for 1 minute, and submerge again for 1 minute in an agitated mixture; then remove the plant material and let dry.~~
    - b. ~~Spray/Drench. Spray thoroughly the trunk, branches, leaf buds, and top and bottom surfaces of foliage to the point of run-off. The dip or spray/drench mixture shall be continuously agitated throughout the treatment procedure.~~

~~Treatment emulsion is prepared by adding 4.7 milliliters of Chlorpyrifos 4E to 19 milliliters of 415-oil in 1 gallon of water. For larger quantities, 16 ounces of Chlorpyrifos 4E is added to 64 ounces of 415-oil in 100 gallons of water.~~
- G. Disposition of Violations.** Commodities covered by this rule which are shipped into the state of Arizona or moved within the state of Arizona in violation of this rule shall, at the option and expense of the owner or authorized agent, be sent out of the state or destroyed. This disposition shall be under the direction of the Director of the Commission of Agriculture and Horticulture and supervision of an Inspector of the Commission.

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E. Disposition of regulated commodity or appliance not in compliance. A regulated commodity or appliance shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out-of-state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

**R3-4-226. Scale insect pest**

**A. Pests covered:** All scale insects belonging to the family *Diaspididae*: Definitions.

“Pest” means all life stages of the following:

*Aonidiella aurantii*, California red scale;

*Aonidiella citrine*, Yellow scale;

*Chrysomphalus aonidum*, Florida red scale; or

*Pulvinaria psidi*, Green shield scale.

**B. Area under quarantine:** The entire state of Alabama, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, and Texas, and the Commonwealth of Puerto Rico.

1. The areas under quarantine for California Red Scale, *Aonidiella aurantii* (Maskell) and Yellow Scale, *Aonidiella citrine* (Coquillett), are the entire commonwealth of Puerto Rico, the states of California, Florida, Georgia, Texas, and the counties of Dallas and Escambia in Alabama.

2. The areas under quarantine for Florida Red Scale, *Chrysomphalus aonidum* (Linnaeus), and Green Shield Scale, *Pulvinaria psidii* (Maskell), are the entire commonwealth of Puerto Rico, the states of Arkansas, Florida, Georgia, Hawaii, Louisiana, Mississippi, Texas, and the counties of Mobile, Macon, Lee, and Montgomery in Alabama.

**C. Commodities covered:** The covered commodities are the plants and plant parts, fruit, except seed, of those genera or species listed below which are hosts of the scale insect pests listed:

1. For California Red and Yellow Scales, the primary host plant is *Euonymus spp.*; the secondary host plants are *Rosa spp.* (rose), *Ilex spp.* (holly), *Camellia spp.*, *Cycas* (Sago Palm), and *Ligustrum japonicum* (Waxleaf Privet), and all species of the genera *Citrus*, *Fortunella*, *Poncirus* and all hybrids thereof.

2. For Florida Red Scale and Green Shield Scale, the host plants are *Chrysalidocarpus spp.* (Areca Palm), *Dracaena spp.*, and *Ficus spp.* (Weeping Fig; Fig):

Regulated commodities. Plants and all plant parts, except seed, of the genera listed below:

*Camellia spp.*

*Chrysalidocarpus spp.*

*Citrus spp.*

*Cycas spp.*

*Dracaena spp.*

*Eremocitrus spp.*

*Euonymus spp.*

*Ficus spp.*

*Fortunella spp.*

*Ilex spp.*

*Ligustrum spp.*

*Microcitrus spp.*

*Poncirus spp.*, and

*Rosa spp.*

**D. Conditions for admission for California Red and Yellow Scale:** The covered commodities listed in R3-4-226(C)(1) are prohibited entry into Arizona from the area under quarantine in R3-4-226(B), unless they meet 1 of the following conditions:

1. Bare root roses: The shipment shall consist only of roses in a completely defoliated condition, free of California Red or Yellow Scale.

2. Miniature roses: Shipment shall be free of California Red or Yellow Scale.

3. Small lots of host plants, except *Euonymus*: The shipment shall consist only of 25 or fewer secondary host plants which are for private use and not for sale. All plants shall be free of scale insects.

4. Cut holly: The shipment shall consist only of holly cuttings for decorative purposes brought in between October 25 and January 1 and shall be found free of scale.

5. Host plants (except *Euonymus*) from scale free area: The shipment shall be accompanied by a permit issued by the Arizona State Entomologist. The Arizona State Entomologist shall issue a permit to a shipping nursery if the following conditions are met:

a. An authorized agricultural official at origin annually files with the Arizona State Entomologist a report, based on extensive and continuous surveys, which defines an area of not less than 180 square miles where pests covered in R3-4-226(A) are not known to exist; and

b. All host plants shipped from the nursery shall be grown from seed or cuttings within the area or shall be grown within the area for a minimum of 2 years.



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6. All other: The shipment shall be accompanied by a certificate issued by an authorized agricultural official stating the name and address of the shipper and consignee, the number and species of the plants to be shipped, the date issued, and that the commodity has been treated or inspected within 5 days of shipment in the appropriate manner listed below.

**D. Restrictions.** A person shall not ship into Arizona a regulated commodity from an area under quarantine unless each shipment is accompanied by an original certificate issued by a plant regulatory official of the state or commonwealth of origin attesting that the commodity was treated as prescribed in subsection (F).

**E. Exemptions.**

1. A bare root rose free of all soil and foliage is exempt from treatment if a regulatory official of the state or commonwealth of origin visually inspected the commodity and found it free from the pest.
2. A miniature rose is exempt from treatment if a regulatory official of the state or commonwealth of origin visually inspected the commodity and found it free from the pest.
3. The Director may issue a permit to allow a regulated commodity from an area under quarantine to enter Arizona without treatment if a plant regulatory official of the state or commonwealth of origin attests that the area is pest-free based on a detection survey.

**F. Conditions for admission for Euonymus:** Euonymus shall be treated by 1 of the following methods:

1. Methyl Bromide Fumigation: Fumigation at atmospheric pressure in a gas tight enclosure of approved design using methyl bromide gas registered for such use, for a period of 2 hours with at least 75% humidity under the following conditions:

a. Gas tight tarpaulin used to cover and enclose commodity:

Fumigated	Rate per 1,000 cu. ft.
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Temperature	
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60°-69°F	3 1/2 pounds of gas
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70°-85°F	3 pounds of gas
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b. Fumigation Chamber:

Fumigated	Rate per 1,000 cu. ft.
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Temperature	
-------------	--

60°-69°F	3 pounds of gas
----------	-----------------

70°-85°F	2 1/2 pounds of gas
----------	---------------------

e. All chambers and tarpaulin enclosures shall be equipped with a circulation fan and the fan shall be operated for a period of 20 minutes following complete introduction of the gas.

2. Sodium Cyanide 99%

Chamber fumigation: 25cc HCN gas per 100 cu. ft. for 1 hour at not less than 18.3°C (60°F) or more than 29.4°C (85.3°F). See label for method of generating HCN gas from sodium cyanide. Circulation shall be maintained during entire fumigation period.

**F. Conditions for admission for secondary hosts.** All hosts except Euonymus shall be allowed entry if 1 of the following criteria is met:

1. Treatment by 1 of the fumigation methods is listed in R3-4-226(E) Cycas and Camellia shall not be fumigated.
2. Plants are inspected and no California Red or Yellow scale is found.

**G. Conditions for admission by Special Permit:** A compliance agreement shall be initiated between individual nurseries and the Commission. This agreement shall permit covered commodities to be shipped into Arizona from a nursery located in the quarantined area with the following restrictions:

1. The nursery shall be inspected annually by an agricultural inspector of the state of origin. If the nursery is found apparently free of live California Red Scale, California Yellow Scale, Florida Red Scale and Green Shield Scale, a certificate attesting to that fact shall be issued and signed by that inspector.
2. All host plants covered in R3-4-226(C)(1) and (2) shall be treated upon arrival at the permitted nursery using the Chlorpyrifos + oil method listed in R3-4-226(G)(6).
3. Euonymus shall be treated again, no more than 15 days prior to shipment into Arizona, using 1 of the fumigation techniques listed in R3-4-226(E).
4. All plants except Euonymus shall be treated again, no more than 15 days prior to shipment into Arizona, using the Chlorpyrifos + oil technique listed in R3-4-226(G)(6).
5. If live scale is found at destination in Arizona, the shipment shall be rejected and the nursery's permit shall be revoked.
6. Chlorpyrifos in a 4 lb. per gallon (4E) formulation registered for such use in an emulsion of narrow range spray oil (Petroleum oil, NR 415, emulsive, EPA No. 464-448-AA).
  - a. 4.7 ml of Chlorpyrifos 4E plus 19 ml of narrow range 415 oil per gallon of water or
  - b. 16 fluid ounces of Chlorpyrifos 4E plus 64 ounces of narrow range 415 oil per 100 gallons of water.
  - c. Methods of application:

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- i. Dip: Totally submerge plant material for 2 minutes. Remove for 1 minute, and submerge again for 1 minute in an agitated mixture, then remove and let dry, or
  - ii. Spray: Spray thoroughly the trunk, branches, leaf buds, and all surfaces of all foliage to the point of run-off. The dip or spray drench mixture shall be continuously agitated throughout the treatment procedure.
- H. ~~Conditions for admission for Florida Red and Green Shield Scale: the covered commodities listed in subsection (C)(2) are prohibited entry into Arizona from the area under quarantine listed in subsection (B)(2), unless they meet 1 of the following criteria:~~
  - 1. ~~Cuttings: The shipment shall consist only of unrooted cuttings for propagation which are inspected by an inspector of the Commission and found free of Florida Red Scale and Green Shield Scale. The shipment shall not contain more than 8 cubic feet of cuttings.~~
  - 2. ~~Small lots: The shipment shall consist of only 25 or fewer host plants which are for private use, not for sale, and which are inspected by an inspector of the Commission and are found free of scale insects.~~
  - 3. ~~Certificate of Inspection or Permit: The shipment shall be accompanied by a certificate issued by an authorized agricultural official of the shipping state or district, affirming that:~~
    - a. ~~Either the shipment has been inspected not more than 5 working days prior to shipment and no Florida Red Scale or Green Shield Scale was found; or~~
    - b. ~~The shipping nursery shall obtain a permit:~~
      - i. ~~Criteria for permit: All covered commodities shall originate from a nursery which has been inspected and found free of Florida Red Scale and Green Shield Scale on an annual basis by an authorized agricultural official. In the case that any covered pests are found in that nursery, the Department of Agriculture of the state of origin shall certify that the plants have been treated in accordance with the permit which has been issued by the Arizona State Entomologist.~~
      - ii. ~~Criteria for suspension or revocation of permit: If permitted nursery is found to be infested with live Florida Red Scale or live Green Shield Scale, permit shall be suspended until such time that the State Entomologist determines that the nursery qualifies for recertification.~~
- E. Treatment. A foliar application of Imidicloprid and a narrow range oil applied at label rates.
- I. ~~Disposition of violations: Any quarantined commodity found in violation of this rule or found to be infested with any of the scale insects listed in this rule shall immediately be sent out of state or destroyed at the option and expense of the owner or the owner's responsible agent and under the direction of the Arizona State Entomologist or his representative.~~
- G. Disposition of regulated commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out-of-state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

**R3-4-230. ~~Tristeza or Quick Decline of Citrus Repealed~~**

- A. ~~Notice of quarantine: It has been determined that Tristeza or Quick Decline of Citrus is a dangerous pest of citrus and many other plants and is not of common distribution in the state of Arizona; that this pest is a serious threat to the citrus industry and ornamental horticulture of the state of Arizona. In order to prevent the introduction of this serious pest into the state of Arizona, it is hereby ordered and declared that the entry of quarantined articles into the state of Arizona shall be governed by the following regulation.~~
- B. ~~Pests: A Virus Disease of Citrus, Tristeza or Quick Decline, or any strain of this disease.~~
- C. ~~Area under quarantine: The entire state of Arizona.~~
- D. ~~Commodities covered: Meyer lemon shall mean the variety of citrus called Meyer lemon and also known as Chinese lemon or Oriental lemon and shall include the trees, seedlings, budded trees, buds or grafts or Meyer lemon grown on any rootstock but shall not include the fruit of the Meyer lemon.~~
- E. ~~Restrictions:~~

~~Meyer lemon, Chinese or Oriental lemon: It shall be unlawful for any person, firm, corporation, company or society to grow, allow to grow, propagate, bud, graft, to sell, give away, transport or allow to be sold, given away or transported, any trees, plants or propagative parts of the variety of citrus known as Meyer lemon, within the quarantined area except that, when the University of Arizona Agricultural Experiment Station shall have tested and approved a strain of Meyer lemon which is free of Tristeza, or Quick Decline Disease, such strain may be propagated, grown and sold under special permit from the State Entomologist of Arizona.~~
- F. ~~Disposition of violations:~~
  - 1. ~~Meyer lemon: Any plant or tree of the Meyer lemon propagated, planted, started, transported or sold in violation of this quarantine regulation shall immediately be placed under quarantine by the State Entomologist of Arizona or his inspectors and shall be removed from the quarantined zone or destroyed at the option and expense of the owner or owners.~~
  - 2. ~~Destruction of diseased trees: Any citrus trees or plants which shall be found by indexing or testing to be infected with the Tristeza, or Quick Decline Disease, shall immediately be removed and destroyed under the supervision of the State Entomologist or his inspectors. Upon determination that the tree or plant is infected with Tristeza, or Quick Decline Disease, the State Entomologist shall advise the owner or owners in writing that said tree is infected with the~~

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disease and that it shall be removed and destroyed under the supervision of an inspector of the Commission. If after 7 days the owner or owners shall not have removed and destroyed the tree or plant, the State Entomologist or his inspector shall remove and destroy said plant.

~~G. General rules: See "General Rules and Regulations, Article 1".~~

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ADMINISTRATION

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R9-22-108                   | Repeal                   |
| Article 8                   | Repeal                   |
| R9-22-801                   | Repeal                   |
| R9-22-802                   | Repeal                   |
| R9-22-803                   | Repeal                   |
| R9-22-804                   | Repeal                   |
| Exhibit A                   | Repeal                   |
| Article 13                  | Repeal                   |
| R9-22-1301                  | Repeal                   |
| R9-22-1302                  | Repeal                   |
| R9-22-1303                  | Repeal                   |
| R9-22-1304                  | Repeal                   |
| R9-22-1305                  | Repeal                   |
| R9-22-1306                  | Repeal                   |
| R9-22-1307                  | Repeal                   |
| R9-22-1308                  | Repeal                   |
| R9-22-1309                  | Repeal                   |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 36-2903.01(B)(4)  
Implementing statute: A.R.S. § 36-2903.01(B)(4)
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**  
Notice of Rulemaking Docket Opening: 9 A.A.R. 4394, October 10, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Barbara Ledder  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4580  
Fax: (602) 253-9115  
E-mail: proposedrules@ahcccs.state.az.us
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**  
Federal regulations implementing the Balanced Budget Act changed the state's Medicaid grievance and appeal systems for managed care. AHCCCS is conforming the rules to comply with the new federal requirements.
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
No studies were reviewed.

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**7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The information contained in the repealed rules will be placed into a new Chapter in 9 A.A.C. 34. The new Chapter, which contains four Articles, is designed to make the rules more user friendly and easier to understand. AHCCCS anticipates there will be minimal impact on all parties involved in the eligibility hearing process in Article 1 and the Claim Dispute process in Article 4. AHCCCS anticipates a moderate increase in cost to AHCCCS, the Office of Administrative Hearings, and AHCCCS contractors from resolving expedited hearings within a three-day time-frame as required in Articles 2 and 3.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Barbara Ledder  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4580  
Fax: (602) 253-9115  
E-mail: [proposedrules@ahcccs.state.az.us](mailto:proposedrules@ahcccs.state.az.us)

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

Date: December 15, 2003  
Time: 1:00 p.m.  
Location: AHCCCS  
701 E. Jefferson  
Phoenix, AZ 85034  
Nature: Public Hearing

Date: December 15, 2003  
Time: 1:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
110 S. Church, Suite 1360  
Tucson, AZ 85701  
Nature: Public Hearing

Date: December 15, 2003  
Time: 1:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
3480 E. Route 66  
Flagstaff, AZ 86004  
Nature: Public Hearing

Proposed rule language will be available on the AHCCCS web site ([www.ahcccs.state.az.us](http://www.ahcccs.state.az.us)) the week of October 27, 2003. Please send comments by 5:00 p.m., December 15, 2003.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ADMINISTRATION

ARTICLE 1. DEFINITIONS

Section

R9-22-108. ~~Grievance and Request for Hearing Related Definitions~~ Repealed

**ARTICLE 8. GRIEVANCE AND REQUEST FOR HEARING REPEALED**

Section

R9-22-801. ~~General Provisions for a Grievance and a Request for Hearing~~ Repealed

R9-22-802. ~~Grievance and Request for Hearing~~ Repealed

R9-22-803. ~~Eligibility Hearing for an Applicant and a Member under R9-22-1435, 9 A.A.C. 22, Article 15, and R9-22-1704~~ Repealed

R9-22-804. ~~Eligibility Hearing for an Applicant and a Member under 9 A.A.C. 22, Article 16~~ Repealed

Exhibit A. ~~Grievance and Request for Hearing Process~~ Repealed

**ARTICLE 13. ~~MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS~~ REPEALED**

Section

R9-22-1301. ~~General Intent and Definitions~~ Repealed

R9-22-1302. ~~Denial of a Request for a Service~~ Repealed

R9-22-1303. ~~Reduction, Suspension, or Termination of a Service~~ Repealed

R9-22-1304. ~~Content of Notice~~ Repealed

R9-22-1305. ~~Exceptions from an Advance Notice~~ Repealed

R9-22-1306. ~~Notice in a Case of Probable Fraud~~ Repealed

R9-22-1307. ~~Expedited Hearing Process~~ Repealed

R9-22-1308. ~~Maintenance of Records~~ Repealed

R9-22-1309. ~~Member Handbook~~ Repealed

ARTICLE 1. DEFINITIONS

**R9-22-108. ~~Grievance and Request for Hearing Related Definitions~~ Repealed**

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“Administrative law judge” means the person defined in A.R.S. § 41-1092.

“Administrative review” means that portion of the grievance process beginning with the filing of a grievance with the Administration or its contractor and concluding with the issuance of a final decision by the Administration or its contractor that advises the party of formal hearing rights under A.R.S. § 41-1092 et seq.

“Complainant” means an applicant, member, person, or entity filing a grievance or request for hearing.

“Date of notice” means the date on a notice of action.

“Grievance” means a complaint that initiates an administrative review that does not involve a hearing under A.R.S. § 41-1092 et seq. A party may request a hearing under A.R.S. § 41-1092 et seq. after an administrative review.

“Hearing” means an administrative hearing under Title 41, Chapter 6, Article 10.

“OAH” means the Office of Administrative Hearings defined in A.R.S. § 41-1092 et seq.

“Party” means a person or entity by or against whom a grievance or request for hearing is brought.

“Respondent” means a party responsible for the adverse action that is the subject of a grievance or request for hearing.

**ARTICLE 8. GRIEVANCE AND REQUEST FOR HEARING REPEALED**

**R9-22-801. ~~General Provisions for a Grievance and a Request for Hearing~~ Repealed**

**A.** ~~Definitions. In this Article, “Adverse action” means any action under this Chapter for which a party may file a grievance or request a hearing under A.R.S. § 41-1092 et seq., under this Article.~~

**B.** ~~Filing a grievance and a request for hearing. Unless provided elsewhere in this Chapter, a written grievance or request for hearing under A.R.S. § 41-1092 et seq., or other written statements shall be considered filed when received by the Administration, as established by the Office of Legal Assistance’s date stamp on the grievance, request for hearing, or other written statement.~~

**C.** ~~Computation of time.~~

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1. Computation of time for filing a grievance begins the day after the act, event, or decision grieved and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.
  2. Timeliness for filing a request for hearing under A.R.S. § 41-1092 et seq. is computed under R2-19-107.
  3. The 30-day time frame for filing a request for hearing under A.R.S. § 41-1092 et seq. begins with the date that the notice of adverse action is dated.
- D.** Complainant's hearing rights. The Administration shall allow a complainant the right to:
1. A hearing under A.R.S. § 41-1092 et seq.; and
  2. Copies of any relevant document from the respondent not protected from disclosure by law at the complainant's expense.
- E.** Withdrawal or denial of a request for hearing.
1. Withdrawal of a request for hearing.
    - a. The Administration shall accept a written request for withdrawal if the written request for withdrawal is received from the complainant before the Administration issues a notice of hearing under A.R.S. § 41-1092 et seq.
    - b. If the Administration issued a notice of hearing under A.R.S. § 41-1092 et seq., a complainant shall send a request for withdrawal to OAH.
  2. Denial of a request for hearing. The Administration may deny a request for hearing under A.R.S. § 41-1092 et seq. upon written determination that:
    - a. The request for hearing is untimely;
    - b. The request for hearing is not for an adverse action permitted under this Article;
    - c. The complainant waives the right to a hearing;
    - d. The request for hearing is moot, as determined by the Administration based on the factual circumstances of each case;
    - e. The subject matter of the grievance is a policy that is not subject to OAH's jurisdiction under A.R.S. § 41-1092 et seq.; or
    - f. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all applicants or members.
- F.** Motion for rehearing or review. Under A.R.S. § 41-1092.09, the Director may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of a hearing that deprived an aggrieved party of a fair hearing;
  2. Misconduct of the Administration, OAH, or a party;
  3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  4. The decision is the result of passion or prejudice;
  5. The decision is not justified by the evidence or is contrary to law; or
  6. Good cause is established for the nonappearance of a party at the hearing.
- G.** Right to reapply. If a discontinuance or denial of eligibility is upheld under A.R.S. § 41-1092.08, the decision shall state that a complainant may reapply for AHCCCS eligibility.

**R9-22-802. Grievance and Request for Hearing Repealed**

**A.** General.

1. This Section provides the exclusive manner for filing a grievance against the Administration, its contractors, or both for any adverse action. The grievance process is illustrated in Exhibit A.
2. This Section shall not apply to an adverse action affecting a member's eligibility or to an adverse action that reduces a member's services as a result of a change in state or federal law.
3. If a hearing is requested, the hearing shall be conducted under A.R.S. § 41-1092.

**B.** Grievance to the Administration or a contractor.

1. Respondent.
  - a. Administration. When grieving the Administration's adverse action, the Administration is the respondent.
  - b. Contractor. When grieving a contractor's adverse action, the contractor is the respondent. The complainant shall file a grievance with the contractor responsible for the adverse action being grieved to allow the contractor to investigate and resolve the grievance.
2. Filing a grievance.
  - a. Member grievance.
    - i. A complainant shall file a grievance with the Administration or a contractor in writing or orally. An oral grievance shall be considered filed as of the date of the oral communication.
    - ii. A complainant shall file a grievance with the Administration or a contractor no later than 60 days after the date of notice of the adverse action.

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- iii. A grievance is not required to specify in detail the factual and legal basis for the grievance and the relief requested.
- b. Grievance other than a member grievance:
  - i. A complainant shall file a grievance with the Administration or a contractor in writing.
  - ii. A complainant shall file a grievance with the Administration or a contractor no later than 60 days after the date of notice of the adverse action except as provided in subsection (B)(2)(b)(iii).
  - iii. A complainant shall file a grievance regarding a claim denial under the time frames in A.R.S. § 36-2904.
  - iv. A grievance shall specify in detail the factual and legal basis for the grievance and the relief requested. Failure to detail the factual or legal basis may result in the denial of a grievance.
- 3. Contractor's final decision of a grievance:
  - a. Contractor's final decision. The contractor shall issue its final decision of the grievance to the complainant no later than 30 days after the filing of the grievance with the contractor, unless the complainant and contractor agree, in writing, to a longer period.
  - b. Contents of contractor's final decision. The contractor's final decision shall include:
    - i. The date of the decision;
    - ii. The factual and legal basis for the decision;
    - iii. The complainant's right to request a hearing under A.R.S. § 41-1092 et seq.; and
    - iv. The manner in which a request for hearing may be filed under A.R.S. § 41-1092 et seq.
  - c. Request for hearing of contractor's final decision of grievance. A complainant may request a hearing under A.R.S. § 41-1092 et seq. on the contractor's final decision of the grievance if:
    - i. The complainant files a written request for hearing with the Administration no later than 30 days after the date of the contractor's final decision of the grievance; or
    - ii. A final decision of the grievance under subsection (B)(3)(a) is not rendered by the contractor within 30 days after the filing of the grievance with the contractor, and the complainant files a written request for hearing under A.R.S. § 41-1092 et seq. based on the contractor's failure or refusal to decide the grievance.
- 4. Administration's final decision of grievance:
  - a. Administration's final decision. The Administration shall:
    - i. Issue its final decision of the grievance to the complainant no later than 30 days after the filing of the grievance with the Administration, unless the complainant and Administration agree, in writing, to a longer period; or
    - ii. Issue a notice of hearing under A.R.S. § 41-1092.03.
  - b. Contents of Administration's final decision. The Administration's final decision shall include:
    - i. The date of the decision;
    - ii. The factual and legal basis for the decision;
    - iii. The complainant's right to request a hearing under A.R.S. § 41-1092 et seq.; and
    - iv. The manner in which a request for hearing may be filed under A.R.S. § 41-1092 et seq.
  - c. Request for hearing of Administration's final decision of grievance. A complainant may request a hearing under A.R.S. § 41-1092 et seq. on the Administration's final decision of the grievance if:
    - i. The complainant files a written request for hearing with the Administration no later than 30 days after the date of the Administration's final decision of the grievance; or
    - ii. A final decision of the grievance under subsection (B)(4)(a) is not rendered by the Administration within 30 days after the filing of the grievance with the Administration, and the complainant files a written request for hearing with the Administration based on the Administration's failure or refusal to decide the grievance.
- 5. Notice of hearing. The Administration shall issue a notice of hearing under A.R.S. § 41-1092.05 if the Administration or a contractor receives a timely request for hearing after the Administration or a contractor issues its final decision of grievance.

**R9-22-803. Eligibility Hearing for an Applicant and a Member under R9-22-1435, 9 A.A.C. 22, Article 15, and R9-22-1704 Repealed**

- A. Adverse eligibility actions:**
- 1. A member or applicant may request a hearing under A.R.S. § 41-1092 et seq. on any of the following adverse eligibility actions:
    - a. Denial of eligibility. A denial of eligibility is an adverse action that an applicant is ineligible for AHCCCS;
    - b. Discontinuance of eligibility. A discontinuance of eligibility is a termination of an AHCCCS member's eligibility;
    - c. Delay in the eligibility determination beyond the 45- or 90-day time frame in R9-22-1502 from the date of application, unless the applicant or representative agrees to a written extension of time; or
    - d. Adverse disability determination for an applicant under 9 A.A.C. 22, Article 15.
  - 2. When requesting a hearing regarding an adverse eligibility action under this Section, the Administration is the respondent.

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**B. Request for hearing of an adverse eligibility action:**

1. Requesting a hearing. A complainant may request a hearing under A.R.S. § 41-1092 et seq. for an adverse eligibility action no later than 30 days after the Administration's adverse eligibility action by:
  - a. Submitting a request for hearing under A.R.S. § 41-1092 et seq. to the Administration; or
  - b. Submitting a written request to the Administration that contains the following information:
    - i. The case name;
    - ii. The adverse eligibility action, and
    - iii. The reason for the hearing.
2. Notice of hearing. The Administration shall issue a notice of hearing under A.R.S. § 41-1092.05 if the Administration receives a timely request for hearing.

**C. AHCCCS coverage and benefits during the hearing process under A.R.S. § 41-1092 et seq.**

1. For a discontinuance action that requires 10-day advance notice, a member whose request for hearing is filed before the effective date of the discontinuance shall continue to receive AHCCCS coverage until a final administrative decision is rendered under A.R.S. § 41-1092.08. A member may waive coverage while the administrative decision is pending.
2. A member whose benefits are continued may be financially liable for all AHCCCS benefits received during a period of ineligibility if a discontinuance decision is upheld under A.R.S. § 41-1092.08.
3. A member who requests a hearing regarding the termination of family planning services under R9-22-1435 or the guaranteed enrollment period under R9-22-1704 shall not continue to be AHCCCS-eligible after the end of the designated time period under A.R.S. § 36-2907.04 and 42 U.S.C. 1396a(e)(2). If the termination of family planning services is overturned, the applicable effective date of AHCCCS coverage shall be set forth in the decision under A.R.S. § 41-1092.08.

**D. Effective date of an overturned denial of AHCCCS eligibility.** If a denial of eligibility is overturned during the hearing process, the applicable effective date of AHCCCS eligibility shall be set forth in the decision under A.R.S. § 41-1092.08.

**R9-22-804. Eligibility Hearing for an Applicant and a Member under 9 A.A.C. 22, Article 16 Repealed**

**A. County adverse eligibility actions:**

1. A member or applicant under 9 A.A.C. 22, Article 16 may request a hearing under A.R.S. § 41-1092 et seq. on any of the following adverse eligibility actions:
  - a. Denial of eligibility. The county's denial of eligibility of:
    - i. An initial application, or
    - ii. A redetermination of eligibility if the redetermination of eligibility does not terminate coverage before the end of a current certification period;
  - b. The county's discontinuance of a member's coverage before the end of the member's current certification period;
  - c. The county's delay in an eligibility determination beyond 30 days after the date of application unless the head of household agrees to a written extension of time; or
  - d. The county's approval of a certification period ending less than 6 full calendar months following the date of determination of eligibility under R9-22-1615.
2. If the county eligibility staff acquires new information that reverses the denial under subsection (A)(1)(a) or discontinuance under subsection (A)(1)(b), the county eligibility staff shall cancel the adverse eligibility action and render a new eligibility action under the requirements specified in 9 A.A.C. 22, Article 16. The county eligibility staff's final eligibility determination is the effective date of AHCCCS eligibility under this subsection.
3. When requesting a hearing regarding an adverse eligibility action under this Section, the county is the respondent.

**B. Request for hearing of a county's adverse eligibility action:**

1. Requesting a hearing. A complainant may request a hearing under A.R.S. § 41-1092 et seq. for an adverse eligibility action no later than 30 days after the Administration's adverse eligibility action by:
  - a. Submitting a request for hearing under A.R.S. § 41-1092 et seq. to the Administration; or
  - b. Submitting a written request to the Administration that contains the following information:
    - i. The case name;
    - ii. The adverse eligibility action, and
    - iii. The reason for the hearing.
2. Notice of hearing. The Administration shall issue a notice of hearing under A.R.S. § 41-1092.05 if the Administration receives a timely request for hearing.
3. The county eligibility staff's action, under subsection (A)(2), to cancel the adverse eligibility action and render a new determination is not a disposition of a pending request for hearing under A.R.S. § 41-1092 et seq.



**C.** County responsibilities.

1. The county eligibility staff shall maintain a register documenting the date a request for hearing under A.R.S. § 41-1092 et seq. is received by county eligibility staff.
2. If requested, county eligibility staff shall assist a complainant or designated representative in completing a request for hearing under A.R.S. § 41-1092 et seq.
3. The county eligibility staff shall complete a pre hearing summary that summarizes the factual basis for an adverse eligibility action described in subsection (A)(1) and which is the basis of a request for hearing under A.R.S. § 41-1092 et seq.
4. County eligibility staff shall send to the Administration a pre hearing summary, a copy of the case file, and the request for hearing under A.R.S. § 41-1092 et seq.:
  - a. To ensure that the Administration receives the materials no later than 10 days after the date the county received the complainant's request for hearing under A.R.S. § 41-1092 et seq.; or
  - b. Ten days after the date the Administration requests the materials, for a request for hearing under A.R.S. § 41-1092 et seq. submitted directly to the Administration.

**D.** AHCCCS coverage and benefits during the hearing process under A.R.S. § 41-1092 et seq.

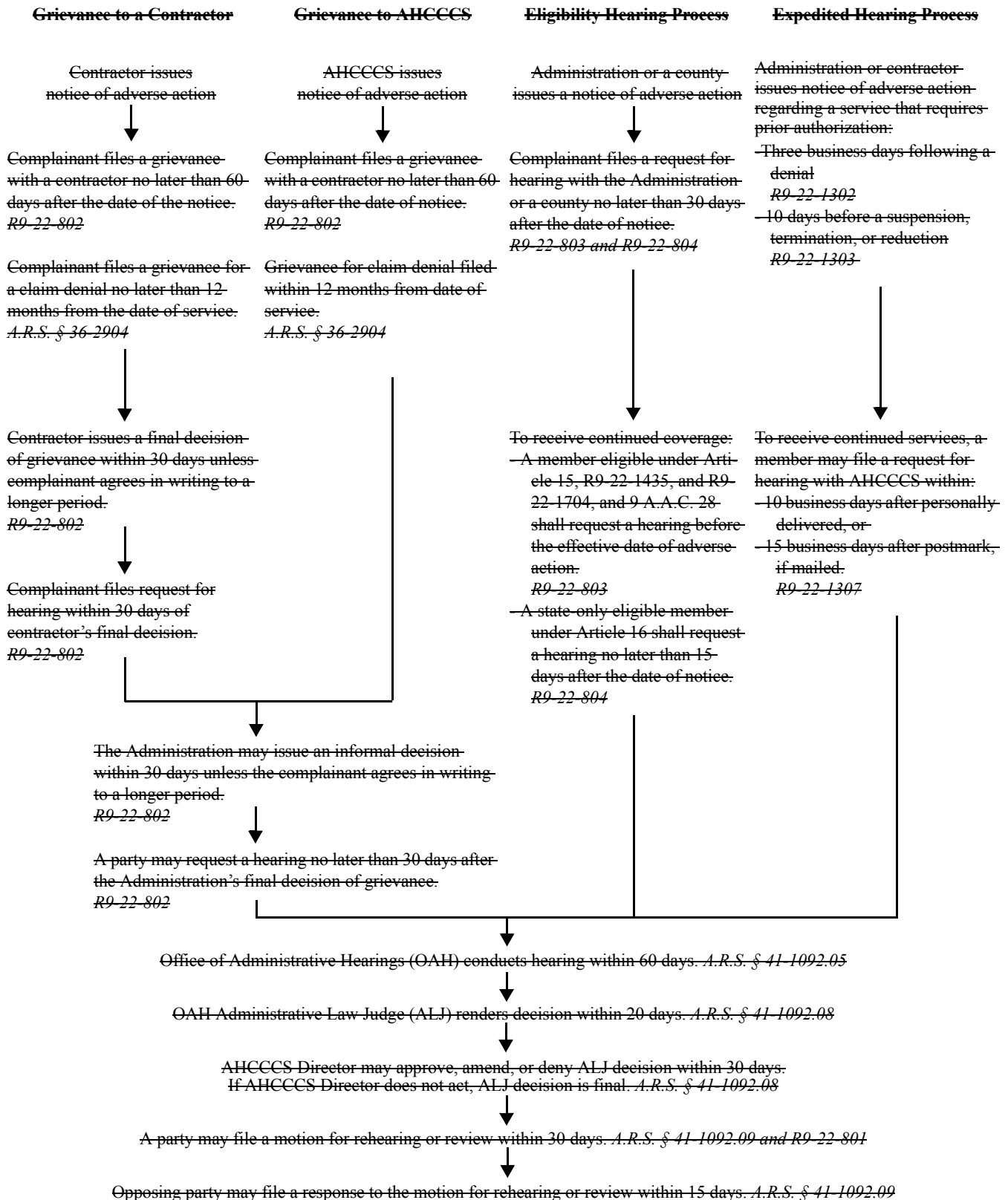
1. A member who requests a hearing regarding a discontinuance of MI/MN or ELIC coverage no later than 15 days after the date of notice of the adverse action shall continue to receive AHCCCS coverage until the earlier of:
  - a. A final administrative decision is rendered under A.R.S. § 41-1092.08, or
  - b. The end of the certification period described in R9-22-1615.
2. A member whose coverage is continued under subsection (D)(1) may be financially liable for all AHCCCS benefits received during a period of ineligibility if a discontinuance decision is upheld under A.R.S. § 41-1092.08.

**E.** Effective date of an overturned denial of AHCCCS eligibility.

1. Initial application. The effective date of a denial of an initial application is the date of the notice of action of eligibility. If the denial of an initial application is overturned during the hearing process, the applicable effective date of AHCCCS eligibility shall be set forth in the decision under A.R.S. § 41-1092 et seq.
2. Redetermination. The effective date of a denial of an eligibility redetermination is the last day of the final month of the person's current certification period. A member or applicant who requests a hearing under A.R.S. § 41-1092 et seq. regarding a denial of an eligibility redetermination shall not continue to be AHCCCS eligible after the end of the current certification period. If the denial of an eligibility redetermination is overturned during the hearing process, the applicable effective date of AHCCCS eligibility shall be set forth in the decision.

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**Exhibit A. Grievance and Request for Hearing Process Repealed**



**ARTICLE 13. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS REPEALED**

**R9-22-1301. General Intent and Definitions Repealed**

**A. General:**

1. This Article defines the notice and expedited request for hearing under A.R.S. § 41-1092 et seq. process when the Administration or a contractor denies, reduces, suspends, or terminates a service that requires prior authorization. This Article provides an expedited hearing request process and opportunity for continued services as an alternative to the provisions of 9 A.A.C. 22, Article 8. The expedited hearing request process is illustrated in 9 A.A.C. 22, Article 8, Exhibit A.
2. The 30-day time-frame for filing a request for hearing under A.R.S. § 41-1092 et seq. begins with the date that the notice of adverse action is dated.

**B. Definitions.** In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:

“Action” means a denial, termination, suspension, or reduction of a service.

“Contractor” means a health plan, ALTCS program contractor, the Arizona Department of Health Services Division of Behavioral Health Services, or a Tribal or Regional Behavioral Health Authority.

“Notice” means a written statement that meets the requirements specified in R9-22-1304.

“Party” means a member, contractor, or the Administration.

**R9-22-1302. Denial of a Request for a Service Repealed**

The Administration or a contractor shall provide a member with written notice no later than 3 business days after the date the Administration or a contractor denies authorization for a requested service that the member does not currently receive.

**R9-22-1303. Reduction, Suspension, or Termination of a Service Repealed**

Except as permitted under R9-22-1305 and R9-22-1306, if the Administration or contractor reduces, suspends, or terminates a service currently provided by the Administration or contractor, the Administration or contractor shall provide the member written notice at least 10 days before the effective date of the intended action.

**R9-22-1304. Content of Notice Repealed**

A notice required under R9-22-1302 or R9-22-1303 shall contain the following:

1. A statement of the action the Administration or a contractor has taken or intends to take;
2. The specific reason for the action, including the facts, specific to the member, that support the action;
3. The specific law, rule, or other written policy, standards, or criteria that support the action, or the specific change in federal or state law that authorizes the action;
4. An explanation of:
  - a. A member's right to request an evidentiary hearing under A.R.S. § 41-1092 et seq.; and
  - b. The circumstances under which the Administration or a contractor shall grant a hearing under A.R.S. § 41-1092 et seq. for an action based on a change in the law; and
5. An explanation of the circumstance under which the Administration or a contractor shall continue a covered service if a member requests a hearing regarding a service that is:
  - a. Reduced;
  - b. Suspended; or
  - c. Terminated.

**R9-22-1305. Exceptions from an Advance Notice Repealed**

The Administration or a contractor may mail a notice for a reduction, suspension, or termination of a service no later than the date of the Administration's or a contractor's action if the Administration or a contractor:

1. Has factual information confirming the death of a member;
2. Receives a written statement signed by the member that:
  - a. States services are no longer wanted; or
  - b. Provides information that requires a reduction or termination of a service and indicates that the member understands that a reduction or termination of a service shall be the result of that information;
3. Learns that a member has been admitted to an institution that makes the member ineligible for services;
4. Does not know the member's whereabouts and mail directed to the member is returned by the post office and no forwarding address is provided;
5. Has established the fact that the member has been approved for Medicaid services outside the state of Arizona;
6. Knows that a member's primary care provider has prescribed a change in the level of medical care; or
7. Knows the notice involves an adverse determination for preadmission screening requirements specified in A.R.S. § 36-2936 for an ALTCS member.

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**R9-22-1306. Notice in a Case of Probable Fraud Repealed**

The Administration or a contractor may shorten the advance notice period to 5 days before the date of action if:

1. The circumstances indicate that action should be taken because of probable fraud by a member; and
2. The facts have been verified through collateral resources, if possible.

**R9-22-1307. Expedited Hearing Process Repealed**

**~~A.~~ Request for expedited hearing:**

1. A member is entitled to an expedited hearing if:
  - a. The Administration or contractor denies, reduces, suspends, or terminates a service that requires authorization by either the Administration or the contractor; and
  - b. The member files the request for expedited hearing with the Administration or the contractor:
    - i. No later than 10 business days after personal delivery of the notice of action; or
    - ii. No later than 15 business days after the postmark date, if mailed, of the notice of action.
2. A member who files a request for expedited hearing may continue to receive the service as specified in subsection (D) pending a hearing decision under A.R.S. § 41-1092.08 if:
  - a. The Administration or contractor reduces, suspends, or terminates a service that requires authorization by either the Administration or contractor; and
  - b. The member files a request for continued services at the same time that the member files the request for expedited hearing specified in subsection (A)(1)(b).

**~~B.~~ Expedited hearing:**

1. A hearing under subsection (A) shall be held no sooner than 20 days, and no later than 40 days after the Administration or contractor receives the request for expedited hearing; or
2. A hearing may be held sooner than 20 days if:
  - a. A request for hearing under A.R.S. § 41-1092 et seq. is filed with the Administration or contractor; and
  - b. All the parties agree, in writing; or
  - c. Upon motion of 1 of the parties under A.R.S. § 41-1092.05.

**~~C.~~ Notice of hearing date.** The Administration shall provide notice of the hearing date under A.R.S. § 41-1092 et seq. to the member or the authorized representative and to all other parties to the hearing.

**~~D.~~ Continued services.** If a request for expedited hearing under A.R.S. § 41-1092 et seq. and a request for continued services is timely filed under this Section, the Administration or a contractor shall not terminate, reduce, or suspend the service during the expedited hearing process.

**~~E.~~ Previously authorized service:**

1. In addition to services that are continued under subsection (D), the Administration or contractor shall continue services pending a hearing decision under A.R.S. § 41-1092.08 if:
  - a. The Administration or contractor denies an authorization for a previously authorized service for the member because the Administration or contractor considers the service new and independent of any previous authorization; and
  - b. The member's primary care physician asserts that the requested service is a necessary continuation of the previous authorization; and
  - c. The member challenges the denial on this basis and timely requests continued services.
2. Services shall not be continued if:
  - a. The parties reach a written agreement; or
  - b. The Administration or contractor believes the primary care provider's request endangers the member.

**~~F.~~ Financial liability of a member.** A member whose service is continued pending a hearing decision under A.R.S. § 41-1092.08 is financially liable for the service received if a decision to reduce, suspend, or terminate is upheld under A.R.S. § 41-1092.08.

**~~G.~~ General provisions.** If an expedited hearing is requested, the hearing shall be conducted under A.R.S. § 41-1092 et seq.

**~~H.~~ Alternative hearing process.** A request for expedited hearing shall be considered a grievance under 9 A.A.C. 22, Article 8; and the Administration shall forward the request for hearing to the contractor within 10 business days after the day the Administration receives the request if:

1. The Administration determines that the request for expedited hearing filed under this Section is not timely, as determined by the Office of Legal Assistance's date stamp on the request; or
2. The request for hearing does not involve the denial, reduction, suspension, or termination of a service.

**R9-22-1308. Maintenance of Records Repealed**

The Administration or contractor shall maintain records of the written notification and the date of the notice under R9-22-1302 and R9-22-1303 given to each member.

**R9-22-1309. ~~Member Handbook Repealed~~**

~~A contractor shall furnish each member with a handbook, as specified in contract, that explains a member's right to file a grievance or request a hearing under A.R.S. § 41-1092 et seq. concerning an action that affects a member's receipt of medical services.~~

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 27. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
HEALTHCARE FOR PRIVATE EMPLOYER GROUPS/AHCCCS ADMINISTERED**

**PREAMBLE**

- 1. Sections Affected**

Article 6	<b><u>Rulemaking Action</u></b>
R9-27-601	Repeal
	Repeal
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**

Authorizing statutes: A.R.S. §§ 36-2903.01(B)(4) and 36-2912(H)(5)  
Implementing statutes: A.R.S. §§ 36-2903.01(B)(4) and 36-2912(H)(5)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 4566, October 24, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Barbara Ledder
Address:	AHCCCS Office of Legal Assistance 701 E. Jefferson, Mail Drop 6200 Phoenix, AZ 85034
Telephone:	(602) 417-4580
Fax:	(602) 253-9115
E-mail:	proposedrules@ahcccs.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

Federal regulations implementing the Balanced Budget Act changed the state's Medicaid grievance and appeal systems for managed care. AHCCCS is conforming the rules to comply with the new federal requirements.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

No studies were reviewed.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

The information contained in the repealed rules will be placed into a new Chapter in 9 A.A.C. 34. The new Chapter, which contains four Articles, is designed to make the rules more user friendly and easier to understand. AHCCCS anticipates there will be a minimal impact on all parties involved in the eligibility hearing process in Article 1 and the Claim Dispute process in Article 4. AHCCCS anticipates a moderate increase in cost to the Administration, the Office of Administrative Hearings, and AHCCCS contractors from resolving expedited hearings within a three-day time-frame as required in Articles 2 and 3.

Notices of Proposed Rulemaking

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Barbara Ledder  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4580  
Fax: (602) 253-9115  
E-mail: proposedrules@ahcccs.state.az.us

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: December 15, 2003  
Time: 1:00 p.m.  
Location: AHCCCS  
701 E. Jefferson  
Phoenix, AZ 85034  
Nature: Public Hearing

Date: December 15, 2003  
Time: 1:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
110 S. Church, Suite 1360  
Tucson, AZ 85701  
Nature: Public Hearing

Date: December 15, 2003  
Time: 1:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
3480 E. Route 66  
Flagstaff, AZ 86004  
Nature: Public Hearing

Proposed rule language will be available on the AHCCCS web site ([www.ahcccs.state.az.us](http://www.ahcccs.state.az.us)) the week of October 27, 2003. Please send comments by 5:00 p.m., December 15, 2003.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rule:**

None

**13. The full text of the rule follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 27. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
HEALTHCARE FOR PRIVATE EMPLOYER GROUPS/AHCCCS ADMINISTERED**

**ARTICLE 6. GRIEVANCE AND REQUEST FOR HEARING REPEALED**

Section

R9-27-601. ~~Grievance and Request for Hearing Repealed~~

**ARTICLE 6. GRIEVANCE AND REQUEST FOR HEARING REPEALED**

**R9-27-601. Grievance and Request for Hearing Repealed**

**~~A. General:~~**

- ~~1. This Article provides the exclusive manner for filing a grievance or request for hearing against the HCGA, the HCG Plans, or both for any adverse action.~~
- ~~2. If a hearing is requested, the hearing shall be conducted under A.R.S. § 41-1092 et seq.~~

**~~B. Filing a grievance and a request for hearing.~~** Unless provided elsewhere in this Chapter, a written grievance or a request for hearing under A.R.S. § 41-1092 et seq., or other written statements shall be considered filed when received by the HCGA, as established by the HCGA's date stamp on the grievance, request for hearing, or other written statement.

**~~C. Computation of time:~~**

- ~~1. Computation of time for filing a grievance begins the day after the act, event, or decision grieved and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.~~
- ~~2. Timeliness for filing a request for hearing under A.R.S. § 41-1092 et seq. is computed under R2-19-107.~~

**~~D. Complainant's hearing rights.~~** The HCGA shall allow a complainant the right to:

- ~~1. A hearing under A.R.S. § 41-1092 et seq.; and~~
- ~~2. Copies of any relevant document from the respondent not protected from disclosure by law at the complainant's expense.~~

**~~E. Withdrawal or denial of a request for hearing:~~**

- ~~1. Withdrawal of a request for hearing:
  - ~~a. The HCGA shall accept a written request for withdrawal if the written request for withdrawal is received from the complainant before the HCGA or its designee issues a notice of hearing under A.R.S. § 41-1092 et seq.~~
  - ~~b. If the HCGA or its designee issued a notice of hearing under A.R.S. § 41-1092 et seq., a complainant shall send a request for withdrawal to OAH.~~~~
- ~~2. Denial of a request for hearing.~~ The HCGA or its designee may deny a request for hearing under A.R.S. § 41-1092 et seq. upon written determination that:
  - ~~a. The request for hearing is untimely;~~
  - ~~b. The request for hearing is not for an adverse action permitted under this Article;~~
  - ~~c. The complainant waives the right to hearing;~~
  - ~~d. The request for hearing is moot, as determined by HCGA or its designee based on the factual circumstances of each case;~~
  - ~~e. The subject matter of the grievance is a policy that is not subject to OAH's jurisdiction under A.R.S. § 41-1092 et seq.; or~~
  - ~~f. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all members.~~

**~~F. Motion for rehearing or review.~~** Under A.R.S. § 41-1092.09, the HCGA may grant a rehearing or review for any of the following reasons materially affecting a party's rights:

- ~~1. Irregularity in the proceedings of a hearing that deprived an aggrieved party of a fair hearing;~~
- ~~2. Misconduct of the HCGA, OAH, or a party;~~
- ~~3. Newly discovered material evidence, that could not, with reasonable diligence, have been discovered and produced at the hearing;~~
- ~~4. The decision is the result of passion or prejudice;~~
- ~~5. The decision is not justified by the evidence or is contrary to law; or~~
- ~~6. Good cause is established for the nonappearance of a party at the hearing.~~

**~~G. Grievance to the HCGA or an HCG Plan:~~**

- ~~1. Respondent:
  - ~~a. HCGA.~~ When grieving the HCGA's adverse action, the HCGA is the respondent.
  - ~~b. HCG Plan.~~ When grieving an HCG Plan's adverse action, the HCG Plan is the respondent. The complainant shall file a grievance with the HCG Plan responsible for the adverse action being grieved to allow the HCG Plan to investigate and resolve the grievance.~~
- ~~2. Filing a grievance:
  - ~~a. Member grievance:
    - ~~i. A complainant shall file a grievance with the HCGA or an HCG Plan in writing or orally. An oral grievance shall be considered filed as of the date of the oral communication.~~
    - ~~ii. A complainant shall file a grievance with the HCGA or an HCG Plan no later than 60 days after the date of notice of the adverse action.~~
    - ~~iii. A grievance is not required to specify in detail the factual and legal basis for the grievance and the relief requested.~~~~~~

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**Notices of Proposed Rulemaking**

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- b. ~~Grievance other than a member grievance:~~
  - i. ~~A complainant shall file a grievance with the HCGA or an HCG Plan in writing.~~
  - ii. ~~A complainant shall file a grievance with the HCGA or an HCG Plan no later than 60 days after the date of notice of the adverse action except as provided in subsection (G)(2)(b)(iii).~~
  - iii. ~~A complainant shall file a grievance regarding a claim denial under the time frames in A.R.S. § 36-2904.~~
  - iv. ~~A grievance shall specify in detail the factual and legal basis for the grievance and the relief requested. Failure to detail the factual or legal basis may result in the denial of a grievance.~~
- 3. ~~HCG Plan's final decision of a grievance:~~
  - a. ~~HCG Plan's final decision. The HCG Plan shall issue its final decision of the grievance to the complainant no later than 30 days after the filing of the grievance with the HCG Plan, unless the complainant and HCG Plan agree, in writing, to a longer period.~~
  - b. ~~Contents of HCG Plan's final decision. The HCG Plan's final decision shall include:~~
    - i. ~~The date of the decision;~~
    - ii. ~~The factual and legal basis for the decision;~~
    - iii. ~~The complainant's right to request a hearing under A.R.S. § 41-1092 et seq.; and~~
    - iv. ~~The manner in which a request for hearing may be filed under A.R.S. § 41-1092 et seq.~~
  - e. ~~Request for hearing of HCG Plan's final decision of grievance. A complainant may request a hearing under A.R.S. § 41-1092 et seq. on the HCG Plan's final decision of the grievance if:~~
    - i. ~~The complainant files a written request for hearing with the HCGA no later than 30 days after the date of the HCG Plan's final decision of the grievance; or~~
    - ii. ~~A final decision of the grievance under subsection (G)(3)(a) is not rendered by the HCG Plan within 30 days after the filing of the grievance with the HCG Plan, and the complainant files a written request for hearing under A.R.S. § 41-1092 et seq. based on the HCG Plan's failure or refusal to decide the grievance.~~
- 4. ~~HCGA's final decision of grievance:~~
  - a. ~~HCGA's final decision. The HCGA or its designee shall:~~
    - i. ~~Issue its final decision of the grievance to the complainant no later than 30 days after the filing of the grievance with the HCGA, unless the complainant and HCGA agree, in writing, to a longer period; or~~
    - ii. ~~Issue a notice of hearing under A.R.S. § 41-1092.03.~~
  - b. ~~Contents of HCGA's final decision. The HCGA's final decision shall include:~~
    - i. ~~The date of the decision;~~
    - ii. ~~The factual and legal basis for the decision;~~
    - iii. ~~The complainant's right to request a hearing under A.R.S. § 41-1092 et seq.; and~~
    - iv. ~~The manner in which a request for hearing may be filed under A.R.S. § 41-1092 et seq.~~
  - e. ~~Request for hearing of HCGA's final decision of grievance. A complainant may request a hearing under A.R.S. § 41-1092 et seq. on the HCGA's final decision of the grievance if:~~
    - i. ~~The complainant files a written request for hearing with the HCGA no later than 30 days after the date of the HCGA's final decision of the grievance; or~~
    - ii. ~~A final decision of the grievance under subsection (G)(4)(a) is not rendered by the HCGA within 30 days after the filing of the grievance with the HCGA, and the complainant files a written request for hearing with the HCGA based on the HCGA's failure or refusal to decide the grievance.~~
- 5. ~~Notice of hearing. The HCGA shall issue a notice of hearing under A.R.S. § 41-1092.05 if the HCGA or an HCG Plan receives a timely request for hearing after the HCGA or an HCG Plan issues its final decision of grievance.~~



NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

**1. Sections Affected**

R9-28-108  
Article 8  
R9-28-801  
R9-28-802  
R9-28-803  
Article 12  
R9-28-1201

**Rulemaking Action**

Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
Repeal

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-2932(H)(1)

Implementing statute: A.R.S. § 36-2932(H)(1)

**3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 4394, October 10, 2003

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Barbara Ledder  
  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
  
Telephone: (602) 417-4580  
  
Fax: (602) 253-9115  
  
E-mail: proposedrules@ahcccs.state.az.us

**5. An explanation of the rules, including the agency's reasons for initiating the rules:**

Federal regulations implementing the Balanced Budget Act changed the state's Medicaid grievance and appeal systems for managed care. AHCCCS is conforming the rules to comply with the new federal requirements.

**6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

No studies were reviewed.

**7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The information contained in the repealed rules will be placed into a new Chapter in 9 A.A.C. 34. The new Chapter, which contains four Articles, is designed to make the rules more user friendly and easier to understand. AHCCCS anticipates there will be a minimal impact on all parties involved in the eligibility hearing process in Article 1 and the Claim Dispute process in Article 4. AHCCCS anticipates a moderate increase in cost to the Administration, the Office of Administrative Hearings, and AHCCCS contractors from resolving expedited hearings within a three-day time-frame as required in Articles 2 and 3.

Notices of Proposed Rulemaking

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Barbara Ledder  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4580  
Fax: (602) 253-9115  
E-mail: proposedrules@ahcccs.state.az.us

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

Date: December 15, 2003  
Time: 1:00 p.m.  
Location: AHCCCS  
701 E. Jefferson  
Phoenix, AZ 85034  
Nature: Public Hearing  
  
Date: December 15, 2003  
Time: 1:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
110 S. Church, Suite 1360  
Tucson, AZ 85701  
Nature: Public Hearing  
  
Date: December 15, 2003  
Time: 1:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
3480 E. Route 66  
Flagstaff, AZ 86004  
Nature: Public Hearing

Proposed rule language will be available on the AHCCCS web site ([www.ahcccs.state.az.us](http://www.ahcccs.state.az.us)) the week of October 27, 2003. Please send comments by 5:00 p.m., December 15, 2003.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ARIZONA LONG-TERM CARE SYSTEM**

**ARTICLE 1. DEFINITIONS**

Section

R9-28-108. ~~Grievance and Request for Hearing Related Definitions~~ Repealed

**ARTICLE 8. GRIEVANCE AND REQUEST FOR HEARING REPEALED**

Section

- R9-28-801. ~~General Provisions for a Grievance and a Request for Hearing Repealed~~  
R9-28-802. ~~Grievance Repealed~~  
R9-28-803. ~~Eligibility Hearing for an Applicant or a Member under 9 A.A.C. 28, Article 4 Repealed~~

**ARTICLE 12. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS REPEALED**

Section

- R9-28-1201. ~~Rights and Responsibilities for Expedited Hearings Repealed~~

**ARTICLE 1. DEFINITIONS**

**R9-28-108. Grievance and Request for Hearing Related Definitions Repealed**

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1 have the following meanings unless the context of the Chapter explicitly requires another meaning:

“Grievance” is defined in 9 A.A.C. 22, Article 1.

“Hearing” is defined in 9 A.A.C. 22, Article 1.

**ARTICLE 8. GRIEVANCE AND REQUEST FOR HEARING REPEALED**

**R9-28-801. General Provisions for a Grievance and a Request for Hearing Repealed**

~~A grievance and a request for hearing under this Chapter shall comply with A.A.C. R9-22-801.~~

**R9-28-802. Grievance Repealed**

~~A grievance and request for hearing under this Chapter shall comply with A.A.C. R9-22-802.~~

**R9-28-803. Eligibility Hearing for an Applicant or a Member under 9 A.A.C. 28, Article 4 Repealed**

~~**A.** General. Except as provided in this Section, an eligibility hearing for an applicant or a member under this Chapter shall comply with A.A.C. R9-22-803.~~

~~**B.** Adverse eligibility actions. An applicant or member may request a hearing under A.R.S. § 41-1092 et seq. regarding:~~

- ~~1. An adverse eligibility action specified in A.A.C. R9-22-803; or~~
- ~~2. An increase in the member's post-eligibility treatment of income (share of cost). When the request for hearing under A.R.S. § 41-1092 et seq. is filed before the effective date of the increased share of cost, the share of cost shall not be increased until a final administrative decision is rendered under A.R.S. § 41-1092.08.~~

**ARTICLE 12. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS REPEALED**

**R9-28-1201. Rights and Responsibilities for Expedited Hearings Repealed**

~~The Administration and its contractors shall comply with the requirements in 9 A.A.C. 22, Article 13.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
CHILDREN'S HEALTH INSURANCE PROGRAM

**PREAMBLE**

**1. Sections Affected**

R9-31-108  
Article 8  
R9-31-801  
R9-31-802  
R9-31-803  
Exhibit A  
Article 13  
R9-31-1301  
R9-31-1302  
R9-31-1303  
R9-31-1304  
R9-31-1305  
R9-31-1306  
R9-31-1307  
R9-31-1308  
R9-31-1309

**Rulemaking Action**

Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
Repeal  
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Repeal  
Repeal  
Repeal  
Repeal  
Repeal

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 36-2986(L)(2)

Implementing statute: A.R.S. § 36-2986(L)(2)

**3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 4395, October 10, 2003

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Barbara Ledder  
Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4580  
Fax: (602) 253-9115  
E-mail: proposedrules@ahcccs.state.az.us

**5. An explanation of the rules, including the agency's reasons for initiating the rules:**

Federal regulations implementing the Balanced Budget Act changed the state's Medicaid grievance and appeal systems for managed care. AHCCCS is conforming the rules to comply with the new federal requirements.

**6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

No studies were reviewed.

**7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The information contained in the repealed rules will be placed into a new Chapter in 9 A.A.C. 34. The new Chapter, which contains four Articles, is designed to make the rules more user friendly and easier to understand. AHCCCS anticipates there will be a minimal impact on all parties involved in the eligibility hearing process in Article 1 and the Claim Dispute process in Article 4. AHCCCS anticipates a moderate increase in cost to the Administration, the Office of Administrative Hearing, and AHCCCS contractors from resolving expedited hearings within a three-day time-frame as required in Articles 2 and 3.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Barbara Ledder  
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701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4580  
Fax: (602) 253-9115  
E-mail: proposedrules@ahcccs.state.az.us

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

Date: December 15, 2003  
Time: 1:00 p.m.  
Location: AHCCCS  
701 E. Jefferson  
Phoenix, AZ 85034  
Nature: Public Hearing

Date: December 15, 2003  
Time: 1:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
110 S. Church, Suite 1360  
Tucson, AZ 85701  
Nature: Public Hearing

Date: December 15, 2003  
Time: 1:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
3480 E. Route 66  
Flagstaff, AZ 86004  
Nature: Public Hearing

Proposed rule language will be available on the AHCCCS web site ([www.ahcccs.state.az.us](http://www.ahcccs.state.az.us)) the week of October 27, 2003. Please send comments by 5:00 p.m., December 15, 2003.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
CHILDREN'S HEALTH INSURANCE PROGRAM

ARTICLE 1. DEFINITIONS

Section

R9-31-108. ~~Grievance and Request for Hearing Related Definitions~~ Repealed

**ARTICLE 8. ~~GRIEVANCE AND REQUEST FOR HEARING~~ REPEALED**

Section

R9-31-801. ~~General Provisions For a Grievance and Request for Hearing~~ Repealed

R9-31-802. ~~Grievance~~ Repealed

R9-31-803. ~~Eligibility Hearing for an Applicant and a Member Under 9 A.A.C. 31, Article 3~~ Repealed

Exhibit A. ~~Grievance and Request for Hearing Process~~ Repealed

**ARTICLE 13. ~~MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS~~ REPEALED**

Section

R9-31-1301. ~~General Provisions~~ Repealed

R9-31-1302. ~~Denial of a Request for a Service~~ Repealed

R9-31-1303. ~~Reduction, Suspension, or Termination of a Service~~ Repealed

R9-31-1304. ~~Content of Notice~~ Repealed

R9-31-1305. ~~Exceptions from an Advance Notice~~ Repealed

R9-31-1306. ~~Notice in a Case of Probable Fraud~~ Repealed

R9-31-1307. ~~Expedited Hearing Process~~ Repealed

R9-31-1308. ~~Maintenance of Records~~ Repealed

R9-31-1309. ~~Member Handbook~~ Repealed

ARTICLE 1. DEFINITIONS

**R9-31-108. ~~Grievance and Request for Hearing Related Definitions~~ Repealed**

~~Definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:~~

~~"Adverse action" means any action under this Chapter for which a party may file a grievance or request a hearing under this 9 A.A.C. 31, Article 8.~~

~~"Grievance" is defined in 9 A.A.C. 22, Article 1.~~

~~"Hearing" is defined in 9 A.A.C. 22, Article 1.~~

~~"Respondent" is defined in 9 A.A.C. 22, Article 1.~~

**ARTICLE 8. ~~GRIEVANCE AND REQUEST FOR HEARING~~ REPEALED**

**R9-31-801. ~~General Provisions For a Grievance and Request for Hearing~~ Repealed**

~~A. A grievance and a request for hearing under this Chapter shall comply with R9-22-801.~~

~~B. In addition to the reasons in R9-22-801, the Administration may deny a request for a hearing if the program reaches the maximum number of members under A.R.S. § 36-2985.~~

**R9-31-802. ~~Grievance~~ Repealed**

~~A. General. A grievance under this Chapter shall be filed and processed under R9-22-802. The grievance process is illustrated in Exhibit A.~~

~~B. Grievance filed by a parent or a legal guardian.~~

~~1. A parent or a legal guardian of an applicant or a member may file a grievance under R9-22-802 on behalf of the applicant or the member.~~

~~2. A parent or a legal guardian who receives coverage under A.R.S. § 36-2984 may file a grievance on their own behalf regarding a denial of a covered service.~~

**C.** Grievance filed by a provider.

1. A provider may file a grievance regarding a denial of a claim for a covered service for a member.
2. A provider may file a grievance regarding a denial of a claim for a covered service for a parent or a legal guardian who receives coverage under A.R.S. § 36-2984.

**R9-31-803. Eligibility Hearing for an Applicant and a Member Under 9 A.A.C. 31, Article 3 Repealed**

**A.** General. Except as provided in this Section, an eligibility hearing for an applicant or a member under this Chapter shall comply with R9-22-803.

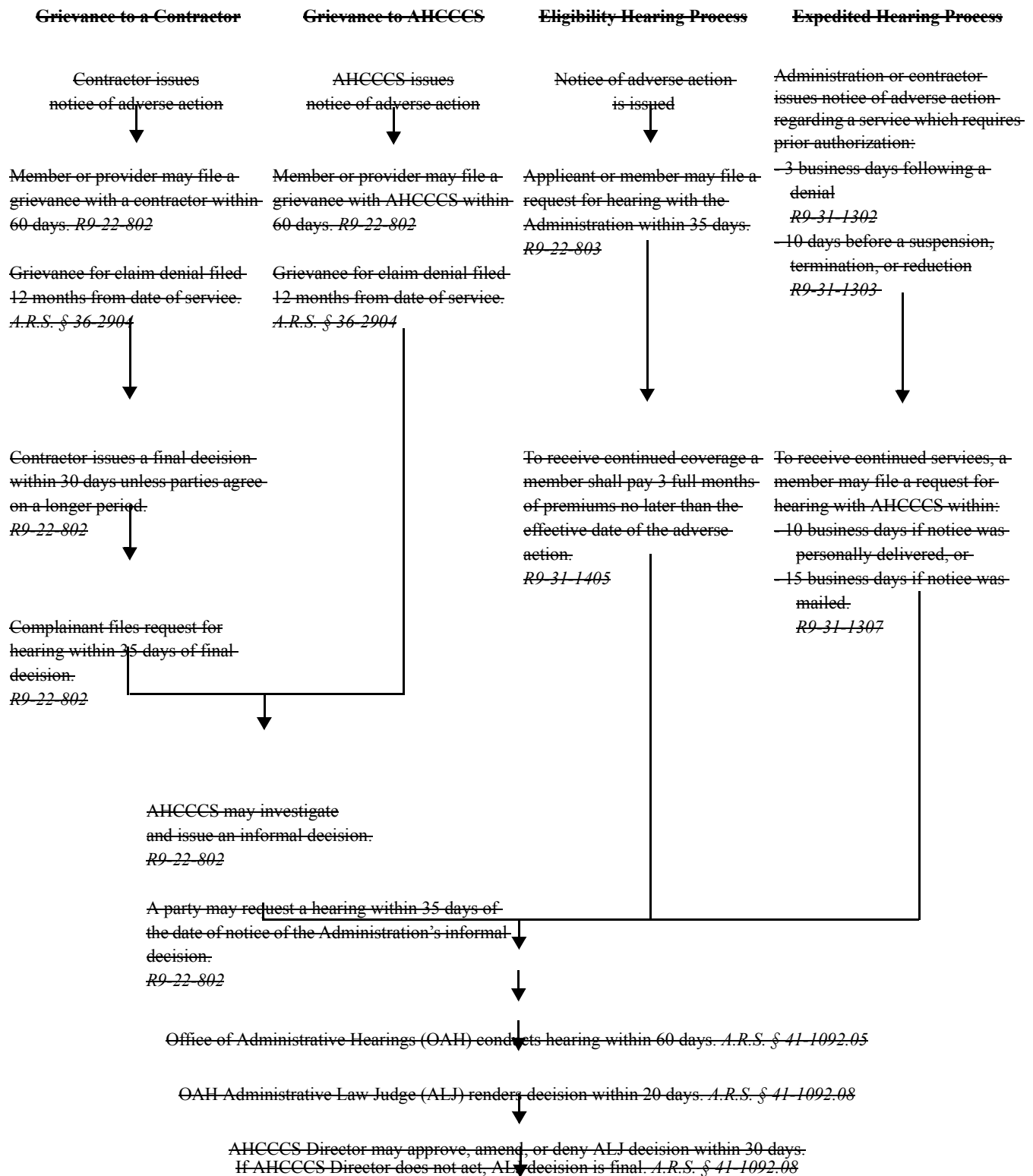
**B.** Adverse eligibility actions.

1. In addition to adverse eligibility actions in R9-22-803, an applicant or member may request a hearing for:
  - a. A delay in the eligibility determination time frame under R9-31-302; or,
  - b. The determination of or payment of a premium amount under 9 A.A.C. 31, Article 14.
2. Except when filed on behalf of an applicant or member, a parent or legal guardian may not file a request for hearing concerning any adverse eligibility action.

**C.** Filing a request for hearing. A request for hearing shall be considered filed when received in writing by the Administration, as established by the Office of Legal Assistance's date stamp on the document.

*Arizona Administrative Register / Secretary of State*  
**Notices of Proposed Rulemaking**

**Exhibit A. Grievance and Request for Hearing Process Repealed**





**ARTICLE 13. MEMBERS' RIGHTS AND RESPONSIBILITIES FOR EXPEDITED HEARINGS REPEALED**

**R9-31-1301. General Provisions Repealed**

- ~~A.~~ The Administration shall administer the program as specified in A.R.S. § 36-2982.
- ~~B.~~ The Director has full operational authority to adopt rules or to use the appropriate rules adopted as specified in A.R.S. § 36-2986.
- ~~C.~~ This Article defines the notice and expedited hearing process when a contractor denies, reduces, suspends, or terminates a service that requires prior authorization. This Article provides an expedited hearing process and opportunity for continued services as an alternative to the provisions of 9 A.A.C. 31, Article 8. The expedited hearing process is illustrated in 9 A.A.C. 31, Article 8, Exhibit A.
- ~~D.~~ For the purpose of this Article,
- ~~"Action"~~ means a denial, termination, suspension, or reduction of a service;
- ~~"Contractor"~~ means a health plan, a qualifying plan, TRBHA, a RBHA, or ADHS Division of Behavioral Health Services;
- ~~"Notice"~~ means a written statement that meets the requirements specified in R9-31-1304.
- ~~"Party"~~ means a member or a contractor.

**R9-31-1302. Denial of a Request for a Service Repealed**

A contractor shall provide a member with written notice no later than 3 business days after the date a contractor denies authorization for a requested service that the member does not currently receive.

**R9-31-1303. Reduction, Suspension, or Termination of a Service Repealed**

Except as permitted under R9-31-1305 and R9-31-1306, if a contractor reduces, suspends, or terminates a service currently provided by the contractor, a contractor shall provide a member with a written notice at least 10 days before the effective date of the intended action.

**R9-31-1304. Content of Notice Repealed**

A notice required under R9-31-1302 or R9-31-1303 shall contain the following:

1. A statement of the action a contractor has taken or intends to take;
2. The specific reason for the action, including the specific facts, personal to the member, that support the action;
3. The specific law, rule, or other written policy, standards, or criteria that supports the action, or the specific change in federal or state law that authorizes the action;
4. An explanation of:
  - a. A member's right to request an evidentiary hearing; and
  - b. The circumstances under which the Administration or a contractor shall grant a hearing for an action based on a change in the law; and
5. An explanation of the circumstance under which a contractor shall continue a covered service if a member requests a hearing regarding a service that is:
  - a. Reduced;
  - b. Suspended; or
  - c. Terminated.

**R9-31-1305. Exceptions from an Advance Notice Repealed**

A contractor may mail a notice of a reduction, suspension, or termination of a service no later than the date of the contractor's action if the contractor:

1. Has factual information that confirms the death of a member;
2. Receives a written statement signed by the member that:
  - a. States services are no longer wanted; or
  - b. Provides information that requires a reduction or termination of a service and indicates that a member understands that a reduction or termination of a service shall be the result of that information;
3. Learns that a member has been admitted to an institution that makes a member ineligible for services;
4. Does not know a member's whereabouts, and mail directed to the member is returned by the post office and no forwarding address is provided;
5. Has established a fact that a member has been accepted for Title XIX or Title XXI services outside the state of Arizona; or
6. Knows that a member's primary care provider has prescribed a change in the level of medical care.

**R9-31-1306. Notice in a Case of Probable Fraud Repealed**

A contractor may shorten the period of advance notice to 5 days before the date of action if:

1. The circumstances indicate that action should be taken because of probable fraud by a member; and
2. The facts have been verified through secondary resources, if possible.

**R9-31-1307. Expedited Hearing Process Repealed**

- A.** Request for expedited hearing.
1. If a contractor denies, reduces, suspends, or terminates a service that requires authorization, a member is entitled to an expedited hearing if a member files a request for hearing under the time frames in subsection (B).
  2. A member shall file a request for expedited hearing or a request for expedited hearing and continued services in the same manner as provided in R9-31-803.
- B.** Time frames. A member shall file a request for hearing with the Administration or the contractor:
1. No later than 10 business days after the date of personal delivery of the notice to the member; or
  2. No later than 15 business days after the postmark date, if mailed, of the notice.
- C.** Expedited hearing. A hearing under this Section shall be held no sooner than 20 days, and not later than 40 days, after the Administration's receipt of the request for hearing. The hearing may be held sooner than 20 days after the Administration's receipt of the request for hearing upon the agreement of all of the parties or upon written motion of 1 of the parties establishing:
1. Extraordinary circumstances; or
  2. The possibility of irreparable harm if the hearing is not held sooner.
- D.** Notice of hearing date. The Administration shall provide notice of the hearing date to the member or the authorized representative and to all other parties to the hearing.
- E.** Continued services. If a request for expedited hearing and a request for continued services is filed in a timely manner under this Section, a contractor shall not terminate, reduce, or suspend the service during the expedited hearing process.
- F.** Previously authorized service.
1. In addition to services which are continued under subsection (E), the contractor shall continue services pending a hearing decision if:
    - a. The contractor denies an authorization for a previously authorized service for the member because the contractor considers the service new and independent of any previous authorization;
    - b. The member's primary care physician asserts that the requested service is a necessary continuation of the previous authorization; and
    - c. The member challenges the denial on this basis and timely requests continued services.
  2. Services shall not be continued if:
    - a. The parties reach agreement; or
    - b. The contractor believes the primary care provider's request endangers the member.
- G.** Financial liability of a member. A member whose service is continued pending a hearing decision under A.R.S. § 41-1092 is financially liable for the service received if a decision to reduce, suspend, or terminate is upheld under A.R.S. § 41-1092.
- H.** General provisions. If an expedited hearing is requested, a hearing shall be conducted under A.R.S. § 41-1092.
- I.** Alternative hearing process. A request for expedited hearing shall be considered a grievance under 9 A.A.C. 31, Article 8, and the Administration shall forward the request to the contractor within 10 business days after the day the Administration receives the request if:
1. The Administration determines that a request for hearing filed under this Section is not timely as determined by the Office of Legal Assistance's date stamp on the document; or
  2. The request for hearing does not involve the denial, reduction, suspension, or termination of a service.

**R9-31-1308. Maintenance of Records Repealed**

The party providing notice of denial, reduction, suspension, or termination of a service shall maintain records of the written notification and the date of the notice given to the member.

**R9-31-1309. Member Handbook Repealed**

A contractor shall furnish each member with a handbook, as specified in contract, that explains a member's right to file a grievance or request a hearing concerning an action that affects a member's receipt of medical services.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 34. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

**GRIEVANCE SYSTEM**

**PREAMBLE**

**1. Sections Affected**

**Rulemaking Action**

Article 1	New Article
R9-34-101	New Section
R9-34-102	New Section
R9-34-103	New Section
R9-34-104	New Section
R9-34-105	New Section
R9-34-106	New Section
R9-34-107	New Section
R9-34-108	New Section
R9-34-109	New Section
R9-34-110	New Section
R9-34-111	New Section
R9-34-112	New Section
R9-34-113	New Section
R9-34-114	New Section
Article 2	New Article
R9-34-201	New Section
R9-34-202	New Section
R9-34-203	New Section
R9-34-204	New Section
R9-34-205	New Section
R9-34-206	New Section
R9-34-207	New Section
R9-34-208	New Section
R9-34-209	New Section
R9-34-210	New Section
R9-34-211	New Section
R9-34-212	New Section
R9-34-213	New Section
R9-34-214	New Section
R9-34-215	New Section
R9-34-216	New Section
R9-34-217	New Section
R9-34-218	New Section
R9-34-219	New Section
R9-34-220	New Section
R9-34-221	New Section
R9-34-222	New Section
R9-34-223	New Section
R9-34-224	New Section
R9-34-225	New Section
Article 3	New Article
R9-34-301	New Section
R9-34-302	New Section
R9-34-303	New Section
R9-34-304	New Section
R9-34-305	New Section
R9-34-306	New Section
R9-34-307	New Section
R9-34-308	New Section
R9-34-309	New Section
R9-34-310	New Section
R9-34-311	New Section
R9-34-312	New Section
R9-34-313	New Section

Notices of Proposed Rulemaking

R9-34-314	New Section
R9-34-315	New Section
R9-34-316	New Section
R9-34-317	New Section
R9-34-318	New Section
R9-34-319	New Section
R9-34-320	New Section
R9-34-321	New Section
R9-34-322	New Section
Article 4	New Article
R9-34-401	New Section
R9-34-402	New Section
R9-34-403	New Section
R9-34-404	New Section
R9-34-405	New Section
R9-34-406	New Section
R9-34-407	New Section
R9-34-408	New Section
R9-34-409	New Section

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 36-2903.01(B)(4), 36-2912(H)(5), 36-2932(H)(1), and 36-2986(L)(2)

Implementing statutes: A.R.S. §§ 36-2903.01(B)(4), 36-2912(H)(5), 36-2932(H)(1), and 36-2986(L)(2)

**3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 4459, October 17, 2003

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Barbara Ledder

Address: AHCCCS  
Office of Legal Assistance  
701 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034

Telephone: (602) 417-4580

Fax: (602) 253-9115

E-mail: proposedrules@ahcccs.state.az.us

**5. An explanation of the rules, including the agency's reasons for initiating the rules:**

Federal regulations implementing the Balanced Budget Act changed the state's Medicaid grievance and appeal systems for managed care. AHCCCS is conforming the rules to comply with the new federal requirements.

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No studies were reviewed.

**7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The information contained in the repealed rules will be placed into a new Chapter in 9 A.A.C. 34. The new Chapter, which contains four Articles, is designed to make the rules more user friendly and easier to understand. AHCCCS anticipates there will be a minimal impact on all parties involved in the eligibility hearing process in Article 1 and the Claim Dispute process in Article 4. AHCCCS anticipates a moderate increase in cost to the Administration, the Office of Administrative Hearing, and AHCCCS contractors from resolving expedited hearings within a three-day time-frame as required in Articles 2 and 3.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Barbara Ledder  
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Fax: (602) 253-9115  
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**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

Date: December 15, 2003  
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701 E. Jefferson  
Phoenix, AZ 85034  
Nature: Public Hearing

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Time: 1:00 p.m.  
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110 S. Church, Suite 1360  
Tucson, AZ 85701  
Nature: Public Hearing

Date: December 15, 2003  
Time: 1:00 p.m.  
Location: ALTCS: Arizona Long-term Care System  
3480 E. Route 66  
Flagstaff, AZ 86004  
Nature: Public Hearing

Proposed rule language will be available on the AHCCCS web site ([www.ahcccs.state.az.us](http://www.ahcccs.state.az.us)) the week of October 27, 2003. Please send comments by 5:00 p.m., December 15, 2003.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 34. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**  
**GRIEVANCE SYSTEM**

**ARTICLE 1. REQUEST FOR ELIGIBILITY HEARING**

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**ARTICLE 1. REQUEST FOR ELIGIBILITY HEARING**

**R9-34-101. Purpose**

This Article establishes the requirements and process for a petitioner to request a State Fair Hearing regarding an adverse action affecting eligibility. Except for the adverse action in R9-34-102(A)(5), this Article does not apply to a person determined eligible by the Arizona Department of Economic Security under 9 A.A.C. 22, Article 14.

**R9-34-102. Definitions**

**A.** “Adverse action” by AHCCCS means:

1. Denial of eligibility.
2. Discontinuance of eligibility.
3. The imposition or increase in Arizona Long Term Care System (ALTCs) share of cost determined under R9-28-408 or R9-28-410.
4. Delay in the eligibility determination beyond the established time-frame, or
5. The imposition or increase in a premium or copayment.

**B.** “AHCCCS” means the AHCCCS Administration as defined in A.R.S. § 36-2901.

**C.** “Day” means calendar day unless otherwise specified.

**D.** “Director” means the Director of the Arizona Health Care Cost Containment System Administration or designee.

**E.** “Director’s Decision” means the final administrative decision under A.R.S. § 41-1092(5).

**F.** “Filed” means the date that AHCCCS receives the request for a State Fair Hearing as established by a date stamp on the written document or other record of receipt.

**G.** “Petitioner” means applicant, member, or other representative as defined in R9-22-1501, R9-22-1704, R9-22-1903, R9-22-2004, R9-27-302, R9-28-401, R9-28-1303, R9-29-203, R9-31-302, R9-31-1702, or for adverse actions under (A)(5), the applicant, member, or other representative as defined in 9 A.A.C. 22, Article 14.

**H.** “State Fair Hearing” means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.

**R9-34-103. Computation of Time**

**A.** Computation of time begins the day after the Notice of Adverse Action and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.

**B.** The 30-day time-frame for filing a request for a State Fair Hearing begins with the date of the Notice of Adverse Action.

**R9-34-104. Petitioner’s Rights**

AHCCCS shall allow a petitioner the right to:

1. A State Fair Hearing; and
2. Copies, at the petitioner’s expense, of any relevant document not protected from disclosure by law.

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**R9-34-105. Who May File**

A petitioner shall request a State Fair Hearing according to this Article.

**R9-34-106. Requesting a State Fair Hearing**

A petitioner may request a State Fair Hearing only for an adverse action.

**R9-34-107. Time-frame for Requesting a State Fair Hearing**

A petitioner shall request a State Fair Hearing in writing with AHCCCS within 30 days after the date of the Notice of Adverse Action.

**R9-34-108. Format and Contents of the Request for a State Fair Hearing**

A petitioner shall submit a written request for a State Fair Hearing to AHCCCS. The request shall contain the case name, the adverse action taken by AHCCCS, and the reason for the State Fair Hearing.

**R9-34-109. Notice of Hearing**

AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a request, which is timely and contains the information listed in R9-34-108.

**R9-34-110. Denial of a Request for a State Fair Hearing**

AHCCCS shall deny a request for a State Fair Hearing upon written determination by AHCCCS that:

1. The request for a State Fair Hearing is untimely;
2. The request for a State Fair Hearing is not for an adverse action permitted under this Article;
3. The petitioner waives the right to a State Fair Hearing;
4. The request for a State Fair Hearing is moot, as determined by AHCCCS, based on the factual circumstances of each case; or
5. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all applicants or members.

**R9-34-111. AHCCCS Time-frame for Resolution of a State Fair Hearing**

AHCCCS shall mail a Director's Decision to the petitioner no later than 30 days after the date of the Administrative Law Judge's decision and within 90 days after the date that the petitioner filed the request for a State Fair Hearing, not including the number of days the petitioner took to file for a State Fair Hearing and days for continuances granted at the petitioner's request.

**R9-34-112. Withdrawal of a Request for a State Fair Hearing**

- A. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the petitioner before AHCCCS mails a Notice of Hearing under R9-34-109.
- B. If AHCCCS mailed a Notice of Hearing under R9-34-109, a petitioner shall send a written request for withdrawal to Office of Administrative Hearings (OAH).

**R9-34-113. Motion for Rehearing or Review**

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting a petitioner's rights:

1. Irregularity in the proceedings of a State Fair Hearing that deprived a petitioner of a fair hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of a party at the hearing.

**R9-34-114. AHCCCS Coverage During the State Fair Hearing Process**

- A. If a petitioner requests a State Fair Hearing because of an increase in the share-of-cost, premium, or copayment and if the request is filed before the effective date of the increase, AHCCCS shall not enforce the increase until a Director's Decision is rendered which supports the increase.
- B. If a petitioner files the request for a State Fair Hearing for a discontinuance action that requires 10-day advance notice before the effective date of the discontinuance, the petitioner shall continue to receive AHCCCS coverage until a Director's Decision is rendered. A petitioner may waive coverage while the Director's Decision is pending.
- C. A petitioner, eligible under 9 A.A.C. 22, Article 31, who requests coverage during the State Fair Hearing process, shall comply with the premium payment requirements under R9-22-1419.
- D. A petitioner whose benefits are continued shall be financially liable for all fee-for-service or capitation payments made by AHCCCS during a period of ineligibility, if a discontinuance decision is upheld under A.R.S. § 41-1092.08.
- E. If a petitioner requests a hearing regarding the termination of family planning services under R9-22-1424 or the guaranteed enrollment period under 9 A.A.C. 22, Article 17, the member shall not continue to be AHCCCS eligible after the end



of the designated time period under A.R.S. § 36-2907.04 and 42 U.S.C. 1396a(e)(2). If the termination of family planning services is overturned, the applicable effective date of AHCCCS coverage shall be set forth in the Director's Decision.

- F.** If a denial of eligibility is overturned, the effective date of AHCCCS eligibility shall be set forth in the Director's Decision.

**ARTICLE 2. APPEAL, GRIEVANCE, AND HEARING FOR AN ENROLLED PERSON**

**R9-34-201. Purpose**

This Article establishes the grievance, appeal, and State Fair Hearing requirements for a person enrolled with an AHCCCS contractor.

**R9-34-202. Definitions**

The following definitions apply for purposes of this Article:

1. "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.
2. "Action" by a contractor means:
  - a. The denial or limited authorization of a requested service, including the type or level of service;
  - b. The reduction, suspension, or termination of a previously authorized service;
  - c. The denial, in whole or in part, of payment for a service;
  - d. The failure to provide a service in a timely manner as set forth in contract;
  - e. The failure of a contractor to act within the time-frames specified in this Article; or
  - f. For an enrollee residing in a rural area with only one contractor, the denial of an enrollee's request to exercise the enrollee's right to obtain services outside the contractor's network.
3. "Appeal" means a request for review of an action.
4. "Contractor" means contractor or program contractor as defined in A.R.S. Title 36, Chapter 29; Comprehensive Medical Dental Program in the Department of Economic Security; and the Children's Rehabilitation Services and Behavioral Health Services in the Arizona Department of Health Services. A contractor is responsible for any functions or responsibilities delegated under a subcontract. It is the contractor's responsibility to ensure that the subcontractor has the ability to perform the delegated activities.
5. "Day" means calendar day unless otherwise specified.
6. "Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.
7. "Director's Decision" means the final administrative decision under A.R.S. § 41-1092(5).
8. "Enrollee" means a person eligible for AHCCCS under A.R.S. Title 36, Chapter 29 and who is enrolled with an AHCCCS contractor. Enrollee includes a person's authorized representative or legal representative.
9. "Filed" means the date that the contractor or AHCCCS, whichever is applicable, receives the request as established by a date stamp on the written document or other record of receipt.
10. "Grievance" means an expression of dissatisfaction about any matter other than an action. Possible subjects for grievances include, but are not limited to, the quality of care or services provided, and aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the enrollee's rights.
11. "Institution for Mental Disease" means an institution defined in 42 CFR 435.1009 and licensed by the Arizona Department of Health Services.
12. "Rural" means a county as defined in A.R.S. § 36-2171.
13. "State Fair Hearing" means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.
14. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday unless:
  - a. The legal holiday falls on Monday, Tuesday, Wednesday, Thursday, or Friday; or
  - b. The legal holiday falls on Saturday or Sunday and a contractor is closed for business the prior Friday or following Monday.

**R9-34-203. Computation of Time**

- A.** Computation of time for calendar day begins the day after the act, event, or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.
- B.** Computation of time for working day begins the day after the act, event or decision and includes all working days.

**R9-34-204. Language and Format of the Notice of Action**

The Notice of Action shall be in writing and shall meet the following language and format requirements:

1. The Notice of Action shall be available in each non-English language spoken by a significant number or percentage of enrollees or potential enrollees in the contractor's geographic service area.
2. Free oral interpretation services explaining the Notice of Action shall be available for all non-English languages.
3. The format of the Notice of Action shall be easily understood and be available in alternative formats, and in an appropriate manner that takes into consideration the special needs of enrollees.

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**R9-34-205. Content of the Notice of Action**

The Notice of Action shall explain the following:

1. The action the contractor has taken or intends to take;
2. The reasons for the action;
3. The enrollee's right to file an appeal with the contractor;
4. The procedures for exercising the rights specified in this Article;
5. The circumstances under which an expedited resolution is available and how to request it; and
6. The circumstances under which an enrollee has a right to have services continue pending resolution of the appeal, how to request that services be continued, and the circumstances under which the enrollee is liable for the costs of services.

**R9-34-206. Contractor Notice of Action Time-frame for Service Authorization Requests**

- A.** For a standard authorization decision for a service requested on behalf of the enrollee, the contractor shall mail a Notice of Action within 14 calendar days following the enrollee's request.
- B.** For authorization requests in which the provider indicates or the contractor determines that following the standard time-frame in (A) could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, the contractor shall make an expedited authorization decision and mail the Notice of Action as expeditiously as the enrollee's health condition requires, but not later than three working days after receipt of the request for service.
- C.** If the enrollee requests an extension of the time-frame in (A) or (B), the contractor shall extend the time-frame up to an additional 14 days as requested by the enrollee.
- D.** If the contractor needs additional information and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in (A) or (B) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
  1. Give the enrollee written notice of the reason for the decision to extend the time-frame and inform the enrollee of the right to file a grievance if the enrollee disagrees with the decision, and
  2. Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
- E.** For service authorization decisions not reached within the maximum time-frame in this Section, the authorization shall be considered denied on the date that the time-frame expires.

**R9-34-207. Contractor Notice of Action Time-frame for Service Termination, Suspension, or Reduction**

- A.** For termination, suspension, or reduction of previously authorized AHCCCS covered service, the contractor shall send the Notice of Action at least 10 days before the date of the action except as provided in (B) or (C).
- B.** The contractor may mail the Notice of Action not later than the date of action if:
  1. The contractor has factual information confirming the death of an enrollee;
  2. The contractor receives a clear written statement signed by the enrollee that the enrollee no longer wishes services or gives information that requires termination or reduction of services and indicates that the enrollee understands that this shall be the result of supplying that information;
  3. The enrollee is age 21 through 64 and has resided in an Institution for Mental Disease for more than 30 days;
  4. The enrollee is an inmate of a public institution with no federal financial participation;
  5. The enrollee's whereabouts are unknown and the post office returns mail, directed to the enrollee, to the contractor indicating no forwarding address; or
  6. The contractor establishes the fact that the enrollee has been accepted for Medicaid by another state.
- C.** The contractor may shorten the period of advance notice to five days before the date of action if the contractor has verified facts indicating probable fraud by the enrollee.
- D.** If the contractor denies payment to a provider, the contractor shall send the enrollee Notice of Action at the time of the action affecting the claim.

**R9-34-208. Who May File**

- A.** An enrollee shall file a grievance, an appeal, or request a State Fair Hearing according to this Article.
- B.** An authorized representative, including a provider, acting on behalf of the enrollee, and with the enrollee's written consent, shall file an appeal or request a State Fair Hearing on behalf of an enrollee. A provider shall be permitted to file a grievance with a contractor at the contractor's discretion.

**R9-34-209. Enrollee Time-frame for Filing an Appeal or Grievance with the Contractor**

- A.** The enrollee shall file an appeal either orally or in writing with the contractor within 60 days after the date of the Notice of Action.
- B.** The enrollee shall file a grievance either orally or in writing with the contractor.
- C.** The enrollee shall file a grievance directly with the contractor. AHCCCS shall refer to the contractor any grievance filed with AHCCCS. A State Fair Hearing is not permitted on a grievance.

**R9-34-210. Contractor General Requirements for Grievance or Appeal Process**

- A.** The contractor shall provide reasonable assistance to enrollees in completing forms and taking other procedural steps. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD (teletypewriter/telecommunications device for the deaf, and text telephone) and interpreter capability.
- B.** The contractor shall acknowledge receipt of each grievance orally or in writing. The contractor shall acknowledge receipt of each appeal in writing.
- C.** The contractor shall ensure that the individual who makes a decision on a grievance or an appeal was not involved in any previous level of review or decision-making.
- D.** The contractor shall ensure that a health care professional who makes decisions on any of the following appeals or grievances have the appropriate clinical expertise in treating the enrollee's condition or disease:
  - 1.** An appeal of a denial that is based on lack of medical necessity.
  - 2.** A grievance regarding denial of expedited resolution of an appeal, or
  - 3.** A grievance or appeal that involves clinical issues.

**R9-34-211. Contractor Special Requirements for the Appeal Process**

- A.** The contractor shall provide that an oral inquiry seeking to appeal an action is treated as an appeal.
- B.** The contractor shall provide a reasonable opportunity for the enrollee to present evidence, and allegations of fact or law, in person as well as in writing. The contractor shall inform the enrollee of the limited time available for this in the case of expedited resolution.
- C.** The contractor shall provide the enrollee and representative the opportunity, before and during the appeal process, to examine the enrollee's case file, including medical records, documents, and records considered during the appeal process, not protected from disclosure by law.
- D.** The contractor shall include, as parties to the appeal, the enrollee or the legal representative of a deceased enrollee's estate.

**R9-34-212. Contractor Time-frame for Standard Disposition of a Grievance**

For standard disposition of a grievance, the contractor shall complete disposition and provide oral or written notice to the enrollee within 90 days after the day the contractor receives the grievance.

**R9-34-213. Contractor Time-frame for Standard Resolution of an Appeal**

- A.** For standard resolution of an appeal, the contractor shall resolve the appeal and mail the written Notice of Appeal Resolution to the enrollee, within 30 days after the day the contractor receives the appeal.
- B.** If the enrollee requests an extension of the 30-day time-frame in (A), the contractor shall extend the time-frame up to an additional 14 days.
- C.** If additional information is needed by the contractor and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in (A) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
  - 1.** Give the enrollee written notice of the reason for the decision to extend the time-frame, and
  - 2.** Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
- D.** If a Notice of Appeal Resolution is not sent within the time-frame in this Section, the appeal shall be considered denied on the date that the time-frame expires.

**R9-34-214. Contractor Process for Expedited Resolution for an Appeal**

- A.** The contractor shall establish and maintain a review process for an expedited appeal. The contractor shall conduct an expedited appeal when:
  - 1.** The contractor receives a request for an expedited appeal from the enrollee and the contractor determines that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function;
  - 2.** The contractor receives a request for an expedited appeal from the enrollee supported with documentation from the provider that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function; or
  - 3.** The contractor receives a request for an expedited appeal directly from the provider who indicates that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function.
- B.** The contractor shall ensure that punitive action is not taken against a provider who requests an expedited resolution or who supports an enrollee's appeal.
- C.** If the contractor denies a request for expedited resolution of an appeal from an enrollee, the contractor shall:
  - 1.** Transfer the appeal to the time-frame for standard resolution in R9-34-213, and

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2. Make reasonable efforts to give the enrollee prompt oral notice of the denial, and follow up within two calendar days with a written notice.

**R9-34-215. Contractor Time-frame for Expedited Resolution of an Appeal**

- A.** For expedited resolution of an appeal, the contractor shall resolve the appeal and mail a written Notice of Appeal Resolution to the enrollee, within three working days after the day the contractor receives the appeal. The contractor shall also make reasonable efforts to provide oral notice.
- B.** If the enrollee requests an extension of the three working day time-frame in (A), the contractor shall extend the time-frame up to an additional 14 days.
- C.** If additional information is needed by the contractor and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in (A) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
  1. Give the enrollee written notice of the reason for the decision to extend the time-frame, and
  2. Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
- D.** For resolution decisions not reached within the time-frame in this Section, the appeal shall be considered denied on the date that the time-frame expires.

**R9-34-216. Content of Contractor Notice of Appeal Resolution**

- A.** The written Notice of Appeal Resolution shall include the results of the resolution process and the date it was completed.
- B.** For appeals not resolved wholly in favor of the enrollees, the Notice of Appeal Resolution shall contain:
  1. The right to request a State Fair Hearing, and how to do so.
  2. The right to request to receive services while the State Fair Hearing is pending, and how to make the request.
  3. The factual and legal basis for the decision, and
  4. That the enrollee shall be liable for the cost of continued services if the Director's Decision upholds the contractor's decision.

**R9-34-217. Enrollee Request for a State Fair Hearing**

- A.** An enrollee may request a State Fair Hearing on the contractor's resolution of an appeal. The request shall be in writing, submitted to and received by the contractor, no later than 30 days after the contractor's mailing of the Notice of Appeal Resolution.
- B.** If an enrollee wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-224.
- C.** AHCCCS shall mail a Notice of Fair Hearing under A.R.S. § 41-1092.05 if a timely request for a State Fair Hearing is received.

**R9-34-218. Administration Time-frame for Resolution of a State Fair Hearing**

AHCCCS shall mail a Director's Decision to the enrollee no later than 30 days after the date of the Administrative Law Judge's decision and within 90 days after the date that the enrollee filed the appeal with the contractor, not including the number of days the enrollee took to file for a State Fair Hearing, and days for continuances granted at the enrollee's request.

**R9-34-219. Enrollee's Expedited State Fair Hearing**

An enrollee may request an expedited State Fair Hearing on the contractor's resolution of an expedited appeal. The request shall be in writing, submitted to and received by the contractor, no later than 30 days after the contractor's mailing of the Notice of Appeal Resolution.

**R9-34-220. Administration Time-frame for Resolution of Expedited State Fair Hearing**

AHCCCS shall mail a Director's Decision to the enrollee within three working days after the date AHCCCS receives the case file and information from the contractor concerning an expedited appeal resolution. AHCCCS shall also make reasonable efforts to provide oral notice of the Director's Decision.

**R9-34-221. Withdrawal of a Request for a State Fair Hearing**

- A.** AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the enrollee before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092, et seq.
- B.** If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092, et seq., an enrollee shall send a written request for withdrawal to the Office of Administrative Hearing.

**R9-34-222. Denial of a Request for a State Fair Hearing**

AHCCCS shall deny a request for a State Fair Hearing under A.R.S. § 41-1092, et seq., upon written determination that:

1. The request for hearing is untimely;
2. The request for hearing is not for an action permitted under this Article;
3. The enrollee waives the right to a hearing;

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4. The request for hearing is moot, as determined by AHCCCS based on the factual circumstances of each case; or
5. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all enrollees.

**R9-34-223. Motion for Rehearing or Review**

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting an enrollee's rights:

1. Irregularity in the proceedings of a hearing that deprived an enrollee of a fair hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of the enrollee at the hearing.

**R9-34-224. Continuation of Services While the Contractor Appeal and the State Fair Hearing Are Pending**

**A.** For the purposes of this Section, timely filing means filing on or before the later of the following:

1. Within ten days after the date that the contractor mails the Notice of Action, or
2. The intended effective date of the contractor's proposed action.

**B.** The contractor shall continue the enrollee's services if:

1. The enrollee files the appeal timely;
2. The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;
3. The services were ordered by an authorized provider;
4. The original period covered by the original authorization has not expired; and
5. The enrollee requests continuation of services.

**C.** If, at the enrollee's request, the contractor continues or reinstates the enrollee's services while the appeal is pending, the services shall be continued until one of the following occurs:

1. The enrollee withdraws the appeal;
2. Ten days pass after the contractor mails the Notice of Appeal Resolution against the enrollee, unless the enrollee, within the 10-day time-frame, has requested, in writing, a State Fair Hearing with continuation of benefits until a Director's Decision is reached;
3. AHCCCS mails a Director's Decision adverse to the enrollee; or
4. The time-period or service limits of a previously authorized service has been met.

**D.** If the Director's Decision upholds the contractor's action, the contractor may recover the cost of the services furnished to the enrollee while the appeal is pending if the services were furnished solely because of the requirements of this Section.

**R9-34-225. Reversed Appeal Resolutions**

**A.** If the contractor or the Director's Decision reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the contractor shall authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires.

**B.** If the contractor or the Director's Decision reverses a decision to deny authorization of services, and the enrollee received the disputed services while the appeal was pending, the contractor shall pay the provider for those services.

**ARTICLE 3. APPEAL AND HEARING FOR A FFS MEMBER**

**R9-34-301. Purpose**

This Article establishes the appeal and State Fair Hearing requirements for an AHCCCS fee-for-service (FFS) member.

**R9-34-302. Definitions**

**A.** "Action" by AHCCCS or a tribal contractor means:

1. The denial or limited authorization of a requested service, including the type or level of service;
2. The reduction, suspension, or termination of a previously authorized service;
3. The failure to provide services in a timely manner as set forth in contract; or
4. The failure of AHCCCS to act within the time-frames specified in this Article.

**B.** "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.

**C.** "Appeal" means a request for review of an action.

**D.** "Day" means calendar day unless otherwise specified.

**E.** "Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.

**F.** "Director's Decision" means the final administrative decision under A.R.S. § 41-1092(5).

**G.** "FFS member" means a FFS member eligible for AHCCCS under A.R.S. Title 36, Chapter 29, and who is enrolled with AHCCCS on a FFS basis.

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- H.** "Filed" means the date that AHCCCS receives the request as established by a date stamp on the written document or other record of receipt.
- I.** "Institution for Mental Disease" means an institution defined in 42 CFR 435.1009 and licensed by the Arizona Department of Health Services.
- J.** "State Fair Hearing" means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.
- K.** "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday unless:
1. The legal holiday falls on Monday, Tuesday, Wednesday, Thursday, or Friday; or
  2. The legal holiday falls on Saturday or Sunday and a contractor is closed for business the prior Friday or following Monday.

**R9-34-303. Computation of Time**

- A.** Computation of time for calendar day begins the day after the act, event, or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.
- B.** Computation of time for working day begins the day after the act, event, or decision and includes all working days.

**R9-34-304. Language and Format of the Notice of Action**

The Notice of Action shall be in writing and shall meet the following language and format requirements:

1. The Notice of Action shall be available in each non-English language spoken by a significant number or percentage of FFS members.
2. Free oral interpretation services explaining the notice shall be available for all non-English languages.

**R9-34-305. Content of the Notice of Action**

The Notice of Action shall explain the following:

1. The action AHCCCS has taken or intends to take;
2. The reasons for the action;
3. The factual and legal basis for the decision;
4. The FFS member's right to file an appeal with AHCCCS;
5. The procedures for exercising the rights specified in this Section;
6. The circumstances under which an expedited resolution is available and how to request it; and
7. The circumstances under which a FFS member has a right to have services continue pending resolution of the appeal, how to request that services be continued, and the circumstances under which the FFS member shall be liable for the costs of these services.

**R9-34-306. Time-frame for Notice of Action for Service Authorization Requests**

- A.** For a standard authorization decision for a service requested on behalf of the enrollee, AHCCCS shall mail a Notice of Action within 14 calendar days following the request.
- B.** For authorization requests in which the provider indicates or AHCCCS determines that following the standard time-frame in (A) could seriously jeopardize the FFS member's life or health, or ability to attain, maintain, or regain maximum function, AHCCCS shall make an expedited authorization decision and provide notice as expeditiously as the FFS member's health condition requires, but not later than three working days after receipt of the request for service.
- C.** If the FFS member requests an extension of the time-frame in (A) or (B), AHCCCS shall extend the time-frame up to an additional 14 days as requested by the FFS member.
- D.** If AHCCCS needs additional information and the extension is in the best interest of the FFS member, AHCCCS shall extend the time-frame in (A) or (B) up to an additional 14 days. If AHCCCS extends the time-frame, AHCCCS shall:
1. Give the FFS member written notice of the reason for the decision to extend the time-frame; and
  2. Mail and carry out the determination as expeditiously as the FFS member's health condition requires and no later than the date the extension expires.
- E.** For service authorization decisions not reached within the time-frames in this Section, the authorization shall be considered denied on the date that the time-frame expires.

**R9-34-307. Time-frame for Notice of Action for Service Termination, Suspension, or Reduction**

- A.** For termination, suspension, or reduction of previously authorized AHCCCS covered service, AHCCCS shall send the Notice of Action at least 10 days before the date of the action except as provided in (B) or (C).
- B.** AHCCCS may mail the Notice of Action not later than the date of action if:
1. AHCCCS has factual information confirming the death of a FFS member;
  2. AHCCCS receives a clear written statement signed by the FFS member that the FFS member no longer wishes services or gives information that requires termination or reduction of services and indicates that the enrollee understands that this shall be the result of supplying that information;
  3. The FFS member is age 21 through 64 and has resided in an Institution for Mental Disease for more than 30 days;
  4. The FFS member is an inmate of a public institution with no federal financial participation;

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5. The FFS member's whereabouts are unknown and the post office returns mail, directed to the FFS member, to the contractor indicating no forwarding address; or
  6. AHCCCS establishes the fact that the FFS member has been accepted for Medicaid by another state.
- C.** AHCCCS may shorten the period of advance notice to five days before the date of action if AHCCCS has verified facts indicating probable fraud by the FFS member.

**R9-34-308. Who May File**

- A.** A FFS member shall file an appeal or request a State Fair Hearing according to this Article.
- B.** An authorized representative, including a provider, acting on behalf of the FFS member and with the FFS member's written consent, shall file an appeal or request a State Fair Hearing on behalf of a FFS member.

**R9-34-309. Time-frame for Filing an Appeal**

The FFS member shall file an appeal either orally or in writing with AHCCCS within 60 days after the date of the Notice of Action.

**R9-34-310. General Requirements for the Appeal Process**

- A.** AHCCCS shall provide reasonable assistance to a FFS member in completing forms and taking other procedural steps. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD (teletypewriter/telecommunications device for the deaf and text telephone) and interpreter capability.
- B.** AHCCCS shall acknowledge receipt of each appeal in writing.
- C.** AHCCCS shall ensure that the individual who makes a decision on an appeal was not involved in any previous level of review or decision-making.

**R9-34-311. Special Requirements for the Appeal Process**

- A.** AHCCCS shall provide that an oral inquiry seeking to appeal an action is treated as an appeal.
- B.** AHCCCS shall provide a reasonable opportunity for the FFS member to present evidence and allegations of fact or law prior to issuance of an appeal resolution.
- C.** AHCCCS shall provide the enrollee and representative the opportunity, before and during the appeals process, to examine the enrollee's case file, including medical records, documents not protected from disclosure by law, and records considered during the appeal process.
- D.** AHCCCS shall schedule a hearing and mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely appeal and:
1. The appeal was reviewed by two independent medical professionals prior to mailing the Notice of Action; or
  2. The FFS member requests a State Fair Hearing for expedited resolution that meets the criteria in R9-34-316.

**R9-34-312. Time-frame for Standard Resolution of an Appeal**

- A.** For standard resolution of an appeal, AHCCCS shall resolve the appeal and mail written Notice of Appeal Resolution to the FFS member within 30 days after the day AHCCCS receives the appeal.
- B.** If the FFS member requests an extension of the 30 day time-frame in (A), AHCCCS shall extend the time-frame up to an additional 14 days if requested by the FFS member.
- C.** If additional information is needed by AHCCCS and the extension is in the best interest of the FFS member, AHCCCS shall extend the time-frame in (A) up to an additional 14 days. If AHCCCS extends the time-frame, AHCCCS shall:
1. Give the FFS member written notice of the reason for the decision to extend the time-frame, and
  2. Mail and carry out the determination as expeditiously as the FFS member's health condition requires and no later than the date the extension expires.
- D.** For resolution decisions not reached within the time-frames in this Section, the appeal shall be considered denied on the date that the time-frames expires.

**R9-34-313. Content of Notice of Appeal Resolution**

- A.** The written Notice of Appeal Resolution shall include the results of the resolution process and the date it was completed.
- B.** For appeals not resolved wholly in favor of the FFS member, the Notice of Appeal Resolution shall contain:
1. The right to request a State Fair Hearing, and how to do so,
  2. The right to request to receive services while the State Fair Hearing is pending, and how to make the request,
  3. The factual and legal basis for the decision; and
  4. That the FFS member shall be liable for the cost of continued services if the Director's Decision upholds AHCCCS' decision.

**R9-34-314. Request for a State Fair Hearing**

- A.** A FFS member may request a State Fair Hearing on AHCCCS' standard resolution of an appeal. The request shall be in writing, submitted to and received by AHCCCS, no later than 30 days after the AHCCCS mailing of the Notice of Appeal Resolution.

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- B.** If a FFS member wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-221.
- C.** AHCCCS shall mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing under the requirements of this Article.

**R9-34-315. Time-frame for Resolution of State Fair Hearing for a Standard Resolution of an Appeal**

AHCCCS shall mail a Notice of Final Decision to the FFS member no later than 30 days after the date the Administrative Law Judge sends the decision to AHCCCS, and within 90 days after the date that the FFS member filed the appeal with AHCCCS, not including the number of days the enrollee took to file for a State Fair Hearing and days for continuances granted at the enrollee's request.

**R9-34-316. Request for Expedited Resolution of an Appeal**

- A.** AHCCCS shall mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 when AHCCCS receives an expedited appeal request from the FFS member no later than 30 days after AHCCCS mails the Notice of Action and:
  - 1. AHCCCS determines that taking the time for a standard resolution could seriously jeopardize the FFS member's life, health, or ability to attain, maintain, or regain maximum function;
  - 2. The expedited appeal request is supported with documentation by the provider supporting that taking the time for a standard resolution could seriously jeopardize the FFS member's life or health, or ability to attain, maintain, or regain maximum function; or
  - 3. AHCCCS receives an expedited appeal request directly from the provider who indicates that taking the time for a standard resolution could seriously jeopardize the FFS member's life or health, or ability to attain, maintain, or regain maximum function.
- B.** AHCCCS shall ensure that punitive action is not taken against a provider who requests an expedited resolution or who supports a FFS member's appeal.
- C.** If AHCCCS denies a request for expedited resolution of an appeal from an FFS member, AHCCCS shall
  - 1. Transfer the appeal to the time-frame for standard resolution in R9-34-315, and
  - 2. Make reasonable efforts to give the FFS member prompt oral notice of the denial, and follow up within two calendar days with a written notice.
- D.** If a FFS member wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-321.

**R9-34-317. Time-frame for Resolution of Expedited State Fair Hearing**

AHCCCS shall mail a written Hearing Decision to the FFS member within three working days after the date that the hearing has concluded.

**R9-34-318. Withdrawal of a Request for a State Fair Hearing**

- A.** AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the FFS member before AHCCCS mails a notice of hearing under A.R.S. § 41-1092 et seq.
- B.** If AHCCCS mailed a notice of hearing under A.R.S. § 41-1092 et seq., a FFS member shall send a written request for withdrawal to OAH.

**R9-34-319. Denial of a Request for a State Fair Hearing**

AHCCCS shall deny a request for hearing under A.R.S. § 41-1092 et seq., upon written determination that:

- 1. The request for hearing is untimely;
- 2. The request for hearing is not for an action permitted under this Article;
- 3. The FFS member waives the right to a State Fair Hearing;
- 4. The request for State Fair Hearing is moot, as determined by AHCCCS based on the factual circumstances of each case; or
- 5. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all enrollees.

**R9-34-320. Motion for Rehearing or Review**

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting an enrollee's rights:

- 1. Irregularity in the proceedings of a hearing that deprived an FFS member of a State Fair Hearing;
- 2. Misconduct of AHCCCS, OAH, or a party;
- 3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
- 4. The decision is the result of passion or prejudice;
- 5. The decision is not justified by the evidence or is contrary to law; or
- 6. Good cause is established for the nonappearance of a party at the hearing.



**R9-34-321. Continuation of Services While the Appeal and the State Fair Hearing are Pending**

- A.** For the purposes of this Section, timely filing means filing on or before the later of the following:
1. Within ten days from the date that AHCCCS mails the Notice of Action, or
  2. The intended effective date of AHCCCS' proposed action.
- B.** AHCCCS shall continue the FFS member's services if:
1. The FFS member files the appeal timely;
  2. The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;
  3. An authorized provider ordered the services;
  4. The original period covered by the original authorization has not expired; and
  5. The FFS member requests continuation of services.
- C.** If, at the FFS member's request, AHCCCS continues or reinstates the FFS member's services while the appeal is pending, the services shall be continued until one of the following occurs:
1. The FFS member withdraws the appeal;
  2. Ten days passes after AHCCCS mails the notice, providing the Notice of Appeal Resolution against the FFS member, unless the FFS member, within the 10-day time-frame, has requested a State Fair Hearing with continuation of benefits until a Director's Decision is reached;
  3. AHCCCS mails a hearing decision adverse to the FFS member; or
  4. The time-period or service limits of a previously authorized service has been met.
- D.** If the Director's Decision upholds AHCCCS' action, the FFS member shall be liable for the cost of the services furnished to the FFS member while the appeal is pending, to the extent that the services were furnished solely because of the requirements of this Section.

**R9-34-322. Reversed Appeal Resolutions**

- A.** If the Director's Decision reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, AHCCCS shall authorize or provide the disputed services promptly, and as expeditiously as the FFS member's health condition requires.
- B.** If the Director's Decision reverses a decision to deny authorization of services, and the FFS member received the disputed services while the appeal was pending, AHCCCS shall pay the provider for those services.

**ARTICLE 4. CLAIM DISPUTE**

**R9-34-401. Purpose**

This Article establishes process and requirements for a provider or contractor to resolve a claim dispute or request a State Fair Hearing.

**R9-34-402. Definitions**

- A.** "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.
- B.** "Claim dispute" means a dispute involving a payment of a claim, denial of a claim, imposition of a sanction or reinsurance.
- C.** "Contractor" means contractor or program contractor as defined in A.R.S. Title 36, Chapter 29; Comprehensive Medical Dental Program in the Department of Economic Security; and the Children's Rehabilitation Services and Behavioral Health Services in the Arizona Department of Health Services. A contractor is responsible for any functions or responsibilities delegated under a subcontract. It is the contractor's responsibility to ensure that the subcontractor has the ability to perform the delegated activities.
- D.** "Day" means calendar day unless otherwise specified.
- E.** "Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.
- F.** "Director's Decision" means the final administrative decision under A.R.S. § 41-1092(5).
- G.** "FFS member" means a FFS member eligible for AHCCCS under A.R.S. Title 36, Chapter 29, and who is enrolled with AHCCCS on a FFS basis and not enrolled with an AHCCCS contractor.
- H.** "Filed" means the date that AHCCCS receives the request as established by a date stamp on the written document or other record of receipt.
- I.** "State Fair Hearing" means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.

**R9-34-403. Computation of Time**

Computation of time for calendar day begins the day after the act, event, or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.

**R9-34-404. Content of Claim Dispute**

A claim dispute shall specify in detail the factual and legal basis for the claim dispute and the relief requested. Failure to detail the factual or legal basis shall result in the denial of a claim dispute.

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**R9-34-405. Filing a Claim Dispute for a Claim Involving a Member Enrolled with a Contractor**

- A.** For a claim for services rendered to a member enrolled with a contractor, the provider shall file a written claim dispute with the contractor under the timelines in A.R.S. § 36-2903.01(B)(4).
- B.** The contractor shall mail a written Notice of Decision of the claim dispute to the provider no later than 30 days after the filing of the claim dispute with the contractor, unless the provider and contractor agree to a longer period.
- C.** The contractor's written Notice of Decision shall include:
  - 1.** The date of the decision.
  - 2.** The factual and legal basis for the decision.
  - 3.** The provider's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and
  - 4.** The manner in which a request for a State Fair Hearing shall be filed under A.R.S. § 41-1092, et seq.
- D.** A provider may request a State Fair Hearing on the contractor's Notice of Decision if:
  - 1.** The provider files a written request for a State Fair Hearing with the contractor no later than 30 days after the date of the contractor's written Notice of Decision, or
  - 2.** The contractor did not render a written Notice of Decision within 30 days after the claim dispute was filed and the provider files a written request for a State Fair Hearing based on the contractor's failure or refusal to decide the claim dispute within 30 days after the date that the Notice of Decision should have been mailed.
- E.** AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if a contractor receives a timely request for hearing from the provider.
- F.** AHCCCS shall mail a Director's Decision to the provider no later than 30 days after the date the Administrative Law Judge sends the OAH decision to AHCCCS.
- G.** AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the provider before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092, et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092, et seq., a provider shall send a written request for withdrawal to OAH.

**R9-34-406. Filing a Claim Dispute from a Contractor for Reinsurance**

- A.** A contractor shall file a written reinsurance claim dispute with AHCCCS under the timelines in A.R.S. § 36-2903.01(B)(4).
- B.** AHCCCS shall mail a written Notice of Decision of the claim dispute for reinsurance to the contractor no later than 30 days after the contractor filing of the claim dispute with AHCCCS, unless AHCCCS and contractor agree to a longer period.
- C.** AHCCCS' written Notice of Decision shall include:
  - 1.** The date of the decision.
  - 2.** The factual and legal basis for the decision.
  - 3.** The contractor's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and
  - 4.** The manner in which a contractor shall file a State Fair Hearing request under A.R.S. § 41-1092 et seq.
- D.** A contractor may request a State Fair Hearing on AHCCCS' Notice of Decision if:
  - 1.** The contractor files a written request for a State Fair Hearing with AHCCCS no later than 30 days after the date of AHCCCS' written Notice of Decision regarding reinsurance, or
  - 2.** AHCCCS did not render a written Notice of Decision regarding reinsurance within 30 days after the claim dispute was filed and the contractor files a written request for a State Fair Hearing based on AHCCCS' failure or refusal to decide the reinsurance claim dispute within 30 days after the date that the Notice of Decision should have been mailed.
- E.** AHCCCS shall mail a notice of a State Fair Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the contractor.
- F.** AHCCCS shall mail a Director's Decision to the contractor no later than 30 days after the date the Administrative Law Judge sends the OAH decision to AHCCCS.
- G.** AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the contractor before AHCCCS mails a notice of hearing under A.R.S. § 41-1092, et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092, et seq., a provider shall send a written request for withdrawal to OAH.

**R9-34-407. Filing a Claim Dispute for a Claim Involving a FFS Member**

- A.** For a claim for a FFS member, the provider shall file a written claim dispute with AHCCCS under the timelines in A.R.S. § 36-2903.01(B)(4).
- B.** AHCCCS shall mail a written Notice of Decision of the claim dispute to the provider no later than 30 days after the provider files the claim dispute with AHCCCS, unless AHCCCS and the provider agree to a longer period.
- C.** AHCCCS' written Notice of Decision shall include:
  - 1.** The date of the decision.
  - 2.** The factual and legal basis for the decision.
  - 3.** The provider's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and

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4. The manner in which a provider shall file a State Fair Hearing request under A.R.S. § 41-1092 et seq.
- D.** A provider may request a State Fair Hearing on AHCCCS' Notice of Decision if:
1. The provider files a written request for a State Fair Hearing with AHCCCS no later than 30 days after the date of AHCCCS' written Notice of Decision, or
  2. AHCCCS did not render a written Notice of Decision within 30 days after the claim dispute was filed and the provider files a written request for a State Fair Hearing based on AHCCCS' failure or refusal to decide the claim dispute within 30 days after the date that the Notice of Decision should have been mailed.
- E.** AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the provider.
- F.** AHCCCS shall mail a Director's Decision to the provider no later than 30 days after the date the Administrative Law Judge sends the OAH decision to AHCCCS.
- G.** AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the provider before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092 et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092 et seq., a provider shall send a written request for withdrawal to OAH.

**R9-34-408. Denial of a Request for a State Fair Hearing**

AHCCCS shall deny a request for hearing under A.R.S. § 41-1092, et seq., upon written determination that:

1. The request for hearing is untimely;
2. The request for hearing is not for an action permitted under this Article;
3. The provider or contractor waives the right to a hearing;
4. The request for hearing is moot, as determined by AHCCCS based on the factual circumstances of each case; or
5. The sole issue presented is a federal or state law requiring an automatic change adversely affecting a provider.

**R9-34-409. Motion for Rehearing or Review**

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting a provider's rights:

1. Irregularity in the proceedings of a hearing that deprived a provider of a fair hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of a party at the hearing.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 6. DEPARTMENT OF INSURANCE**

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| Article 21                         | New Article                     |
| R20-6-2101                         | New Section                     |
| R20-6-2102                         | New Section                     |
| R20-6-2103                         | New Section                     |
| R20-6-2104                         | New Section                     |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 20-143

Implementing statutes: A.R.S. §§ 20-143 and 20-2121
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 40, January 3, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Margaret McClelland

Address: Arizona Department of Insurance  
2910 N. 44th Street, 2nd Floor  
Phoenix, AZ 85018

Telephone: (602) 912-8456

Fax: (602) 912-8452
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

This Article is intended to establish standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of customer information, under Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b), and 6807 (Gramm-Leach Bliley).

**Specific Section-by-Section Explanation of This Proposal**

R20-6-2101 requires that each licensee implement a written information security system.

R20-6-2102 establishes objectives for the information security program.

R20-6-2103 establishes what the information security program must be designed to do.

R20-4-2104 lists methods of development and implementation of an information security program.
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None
- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business and consumer impact:**

This rule carries out the data security mandates of the Gramm-Leach-Bliley Act (GLBA). GLBA requires the functional regulator for each financial service industry to establish appropriate standards relating to administrative, technical, and physical safeguards of customer records and information. The Department, as the functional regulator for insurance proposes these rules to implement the federal mandates. The rules allow for flexibility and permit companies to adjust based on their own peculiar needs and systems. These rules adopt the model of the National Association of Insurance Commissioners. Adoption of the national model benefits multistate users who will not have to develop separate and differing systems for the many states in which they do business. Many insurers are already complying

with the requirements of these rules as insurance information privacy laws have been in place for some time. A.R.S. § 20-2101 et seq.

This rule should result in a program that produces greater efficiency and improved methodology for keeping customer information secure. A more efficient security program could result in lower administrative costs for insurers, which could, in turn, be passed on to consumers. Conversely, some licensees will incur costs for putting in place a customer information security program and those costs could be passed on to the customers. These impacts are the result of federal mandates, rather than state rules.

The consumers involved are those whose information is in records and databases of licensees, which is a considerable segment of the state's population. This rule should reduce the likelihood that consumer's information will be accessed by those who have no legitimate authority, purpose or use. A more efficient security program could result in lower administrative costs for insurers, which could, in turn, be passed on to consumers. A benefit to consumers includes the intangible comfort in knowing that a program is in place to protect the confidentiality and integrity of nonpublic personal information in the licensees' possession. However, the rules could result in a cost savings for consumers who will not have to incur costs to remedy damage from identity theft or other harm that can result from security breaches. It is unlikely that these, rules or any rules, will result in an absolutely foolproof program, but they can result in protection against anticipated threats or hazards to security or integrity of the information.

Small or large businesses engaged in the business of consulting or providing software or other products or services for protecting information could benefit as a result of receiving contracts from or selling products to licensees.

There will be a minimal economic impact on the Department, the Office of the Secretary of State and the Governor's Regulatory Review Council for costs associated with the rulemaking process. The Department does not expect the rule-making to have any economic impact on any other public agencies or political subdivisions.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Margaret McClelland  
Address: Arizona Department of Insurance  
2910 N. 44th Street, 2nd Floor  
Phoenix, AZ 85018  
Telephone: (602) 912-8456  
Fax: (602) 912-8452

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

ADOI will hold an oral proceeding to receive public comments in accordance with A.R.S. § 41-1023 on December 16, 2003 at 10:00 a.m. at the Arizona Department of Insurance, 2910 N. 44th Street, Phoenix, AZ, 3rd floor training room. ADOI will accept oral or written comments that are received by 5:00 p.m. on December 18, 2003 or which are postmarked by that date. The comment period will end and the record will close at 5:00 p.m. on December 18, 2003.

ADOI is committed to complying with the Americans with Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADOI at least 72 hours before the hearing.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**12. Incorporations by reference and their location in the rules:**

Not applicable

**13. The full text of the rules follows:**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 6. DEPARTMENT OF INSURANCE**

**ARTICLE 21. CUSTOMER INFORMATION SECURITY PROGRAM**

Section

- R20-6-2101. Definitions  
R20-6-2102. Customer Information Security Program  
R20-6-2103. Objectives of Customer Information Security Program  
R20-6-2104. Guidelines for Methods of Development and Implementation

**ARTICLE 21. CUSTOMER INFORMATION SECURITY PROGRAM**

**R20-6-2101. Definitions**

The following definitions apply in this Article:

1. "Consumer" means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information, or that person's legal representative, and includes a prospective applicant, policyholder, certificate holder, insured, or claimant.
2. "Customer" means a consumer who has a relationship with a licensee under which the licensee provides one or more insurance products or services to the consumer that are used primarily for personal, family, or household purposes.
3. "Customer information" means personal information and privileged information about a customer whether in paper, electronic or other form, that is maintained by or on behalf of an insurance institution, insurance producer, or insurance support organization.
4. "Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.
5. "Insurance institution" has the meaning prescribed in A.R.S. § 20-2102(10).
6. "Insurance producer" means a person required to be licensed under A.R.S. Title 20, Chapter 2, Article 3 to sell, solicit, or negotiate insurance and includes a managing general agent as defined in A.R.S. § 20-311.
7. "Insurance support organization" has the meaning prescribed in A.R.S. § 20-2102(13).
8. "Licensee" means an insurance institution, insurance producer, or insurance support organization, except that "licensee" shall not include a purchasing group or an unauthorized insurer in regard to the excess line business conducted under Title 20, Chapter 2, Article 5.
9. "Personal information" has the meaning prescribed in A.R.S. § 20-2102(19).
10. "Privileged information" has the meaning prescribed in A.R.S. § 20-2102(22).
11. "Service provider" means a person that maintains, processes or otherwise is permitted access to customer information through its provision of services directly to a licensee.

**R20-6-2102. Customer Information Security Program**

A licensee shall implement a comprehensive written customer information security program that includes administrative, technical and physical safeguards for the protection of customer information. The administrative, technical and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

**R20-6-2103. Objectives of Customer Information Security Program**

A licensee's customer information security program shall be designed to:

1. Ensure the security and confidentiality of customer information;
2. Protect against any anticipated threats or hazards to the security or integrity of the information; and
3. Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any customer.

**R20-6-2104. Guidelines for Methods of Development and Implementation**

A licensee may implement the requirements of R20-6-2102 and R20-6-2133 by the actions and procedures prescribed in this Section, which are non-exclusive illustrations:

1. A licensee may assess risk by:
  - a. Identifying reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration or destruction of customer information or customer information systems;
  - b. Assessing the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and
  - c. Assessing the sufficiency of policies, procedures, customer information systems and other safeguards in place to control risks.
2. A licensee may manage and control risk by:
  - a. Designing its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;
  - b. Training staff to implement the licensee's information security program; and
  - c. Regularly testing or otherwise regularly monitoring the key controls, systems and procedures of the information security program. The frequency and nature of these tests or other monitoring practices shall be determined by the licensee's risk assessment.

3. A licensee may oversee service provider arrangements by:
  - a. Exercising appropriate due diligence in selecting its service providers; and
  - b. Requiring its service providers to implement measures designed to meet the objectives of this Article, and, where indicated by the licensee's risk assessment, taking appropriate steps to confirm that its service providers have satisfied these obligations.
4. A licensee may monitor, evaluate and adjust, as appropriate, its information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to customer information systems.